

TABLE OF CONTENTS

EX.	DESCRIPTION	PAGE(S)
1	Declaration of Dr. Torben Voetmann dated October 23, 2015	0804-0806
2	Transcript of Dwight Custis Lee Brooks dated October 14, 2015	0807-0851
3	Christopher Kelly letter to Eugene Ingoglia and Gregory Morvillo dated August 19, 2015	0852-0855
4	Jason Somensatto letter to Christopher Kelly dated August 26, 2015	0856-0859
5	Jason Somensatto email to Christopher Kelly with subject “SEC v. Huang” dated September 25, 2015	0860
6	Defendant Bonan Huang’s Supplemental Answers to Plaintiff’s Second Set of Interrogatories dated September 9, 2015	0861-0865
7	Defendant Nan Huang’s Supplemental Answers to Plaintiff’s Second Set of Interrogatories dated September 9, 2015	0866-0870

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

BONAN HUANG,
NAN HUANG,

Defendants.

Case No. 2:15-cv-00269-MAK
(E.D.Pa.)

DECLARATION

I, Dr. Torben Voetmann, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge:

1. I am a Principal at The Brattle Group, a financial and economic consulting firm, and an adjunct professor at the University of San Francisco's School of Management.
2. I have been asked by counsel for Defendants to examine the number of instances in which price returns following revenue announcements went in the opposite direction of "revenue surprises", defined by Mr. Stephen Graham as the difference between actual revenues and analyst revenue forecasts for a given company for any given quarter.¹ A positive revenue surprise denotes that actual revenues exceeded the corresponding analyst revenue forecast, and vice versa for a negative revenue surprise. I rely on the data I gathered for my rebuttal report and conduct my analysis for the subset of 132 companies for which Mr. Graham found a statistically significant correlation between Capital One transaction data and revenues.²

¹ Mr. Graham's measure of revenue surprises is thus not normalized by price or any other measure.

² See Graham Report, Exhibit B.

3. Exhibit 1 below displays the results of my analysis. There are 2,286 company quarters or observations in total for the subset of 132 companies with available data for reported revenues, analyst revenue forecasts and price returns. Panel A shows that abnormal price returns (adjusting for the market) went in the opposite direction of revenue surprises for approximately 44% of the total number of observations. The results are similar if I examine raw price returns instead of abnormal price returns, displayed in Panel B.

Exhibit 1
Price Returns vs. Revenue Surprises for Graham's 132 "Significant" Companies

		Abnormal Price Returns		Raw Price Returns	
		Occurrences	Percentage of	Occurrences	Percentage of
			Total		Total
		[A]		[B]	
Positive Revenue Surprise, Negative Price Returns	[1]	585	25.6%	579	25.3%
Negative Revenue Surprise, Positive Price Returns	[2]	432	18.9%	408	17.8%
All Revenue Surprises with Opposite Price Returns	[3]	1017	44.5%	987	43.2%
Total Observations (Company Quarters)	[4]	2286	100.0%	2286	100.0%

Source: Bloomberg LP; Expert Report of Stephen Graham dated Sept. 18, 2015.

Note:

[1]: The company reported revenues are greater than the analyst revenue forecasts and the price return measure is negative.

[2]: The company reported revenues are less than the analyst revenue forecasts and the price return measure is positive.

[3]: [1] + [2]

[4]: The total number of quarterly company observations with available reported revenues, analyst revenue forecasts, and price returns data.

[A]: Abnormal Price Returns are calculated as Raw Price Return - SPXT Index Price Return dependent on the announcement time. If the announcement time is after the market closes, the Price Returns are calculated as the change in the price between the announcement date and the day after the announcement date. Otherwise, the Price Returns are calculated as the change in the price between the day before the announcement date and the announcement date. The SPXT Index is the S&P 500 Total Return Index.

[B]: Raw Price Returns are calculated as the change in Price dependent on the announcement time. See note above.

4. An example of a particular company which had several instances of abnormal price returns moving in the opposite direction of revenue surprises is Advance Auto Parts Inc. (AAP). For example, in 2009 Q1, 2009 Q2, 2013 Q1 and 2014 Q3, actual reported revenues for

Advance Auto Parts were all higher than analyst revenue forecasts but the corresponding abnormal price returns following the revenue announcements were all negative.

5. Similarly, Chipotle (CMG) displayed several instances of the opposite trend, *i.e.* actual revenues were lower than analyst expectations on many occasions but the corresponding post-announcement abnormal price returns were all positive. This occurred in 2009 Q1, 2009 Q2, 2009 Q4, 2012 Q2 and 2014 Q4. For example, in 2009 Q1, Chipotle's actual revenues were \$354 million versus corresponding analyst expectations of \$361 million. However, the abnormal price return following the revenue announcement for this quarter was a positive 6.32% (and the raw price return was 5.57%). Therefore, the actual revenues were lower than the corresponding analyst expectations but, contrary to Mr. Graham's prediction, the price return following the revenue announcement was relatively large and positive. In 2012 Q2, Chipotle again reported actual revenues of \$691 million which were lower than the analyst revenue forecast of \$707 million, but the post-announcement abnormal price return was a positive 1.17% (and the raw price return was a positive 1.46%).
6. In sum, the data shows that for 44% of all observations across company quarters, the price impact was in the opposite direction of the expected price impact based purely on the revenue surprise as defined by Mr. Graham.



Torben Voetman
Executed: October 23, 2015



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Transcript of **Dwight Custis Lee Brooks**

Date: October 14, 2015

Case: Securities and Exchange Commission -v- Huang, et al

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Conducted on October 14, 2015

1 (Pages 1 to 4)

<p>1 UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA 3 4 SECURITIES AND EXCHANGE COMMISSION) 5 Plaintiff,) 6 v.) Civil Action No. 7 BONAN HUANG and NAN HUANG) 2:15-cv-00269-MAK 8 Defendants.) 9 10 CONFIDENTIAL 11 12 Deposition of Capital One 13 14 By and through its Corporate Representative, 15 16 DWIGHT CUSTIS LEE BROOKS 17 18 Richmond, Virginia 19 20 Wednesday, October 14, 2013 21 22 11:00 a.m. 23 24 Job No. 94420 25 Pages: 1 - 92 Reported by: Lois Boyle, RMR</p>	<p>3 1 A P P E A R A N C E S 2 ON BEHALF OF THE PLAINTIFF, SECURITIES AND EXCHANGE 3 COMMISSION: 4 CHRISTOPHER R. KELLY, ESQUIRE 5 DAVID L. AXELROD, ESQUIRE 6 U.S. SECURITIES AND EXCHANGE COMMISSION 7 DIVISION OF ENFORCEMENT 8 One Penn Center 9 1617 JFK Boulevard 10 Suite 520 11 Philadelphia, PA 19103 12 (215)597-3741 13 14 ON BEHALF OF THE DEFENDANT, BONAN HUANG AND NAN HUANG: 15 JASON SOMENSATTO, ESQUIRE 16 EUGENE INGOGLIA, ESQUIRE 17 MORVILLO, LLP 18 1101 17th Street 19 Suite 705 20 Washington, DC 20036 21 (202)803-5859 22 23 24 25</p>
<p>2 1 Deposition of DWIGHT CUSTIS LEE BROOKS, held at 2 the offices of: 3 4 5 Murphy & McGonigle, P.C. 6 4870 Sadler Road 7 Suite 301 8 Glen Allen, Virginia 23060 9 10 11 12 Pursuant to agreement, before Lois B. Boyle, RMR 13 and Notary Public in and for the State of Virginia. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>4 1 A P P E A R A N C E S (CONTINUED) 2 ON BEHALF OF CAPITAL ONE: 3 TIMOTHY P. PETERSON, ESQUIRE 4 MURPHY & McGONIGLE, P.C. 5 555 13th Street, NW 6 Suite 410 West 7 Washington, DC 20004 8 (202)661-7027 9 10 MATTHEW B. JONES, ESQUIRE 11 MURPHY & McGONIGLE, P.C. 12 4870 Sadler Road 13 Suite 301 14 Glen Allen, VA 23060 15 (804)762-5369 16 17 JONATHAN CHIU, ASSISTANT GENERAL COUNSEL 18 CAMERON FLOOD, ESQUIRE 19 CAPITAL ONE SERVICES, LLC 20 15000 Capital One Drive 21 Richmond, VA 23238 22 (804)284-8928 23 24 25</p>

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<p>1 CONTENTS</p> <p>2 EXAMINATION OF DWIGHT CUSTIS LEE BROOKS PAGE</p> <p>3 By Mr. Somensatto 6</p> <p>4 By Ingoglia 90</p> <p>5</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 BROOKS DEPOSITION EXHIBIT PAGE</p> <p>10 Exhibit 1 Subpoena of Dwight C.L. Brooks 15</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 just let me know, okay?</p> <p>2 A. (Nodding in the affirmative.)</p> <p>3 Q. If you need to take a break at any time, also</p> <p>4 just let me know. The only thing that I ask is that you</p> <p>5 answer the question that's pending before we take a</p> <p>6 break. Does that make sense?</p> <p>7 A. Makes sense.</p> <p>8 Q. I'll probably take breaks about once an hour</p> <p>9 or so to make it easier on you.</p> <p>10 MR. JONES: It's really to accommodate</p> <p>11 Mr. Somensatto.</p> <p>12 MR. SOMENSATTO: Right.</p> <p>13 Q. Can you give me your name for the record,</p> <p>14 please?</p> <p>15 A. Dwight Custis Lee Brooks.</p> <p>16 Q. How old are you, Mr. Brooks?</p> <p>17 A. I am 45.</p> <p>18 Q. And what's your work address?</p> <p>19 A. 15000 Capital One Drive.</p> <p>20 Q. And your home address?</p> <p>21 A. 5724 Shady Grove Road, Glen Allen, Virginia</p> <p>22 23059.</p> <p>23 Q. Is Capital One's address here in Glen Allen or</p> <p>24 in Richmond?</p> <p>25 MR. KELLY: Objection to form.</p>
<p>1 PROCEEDINGS</p> <p>2 Whereupon,</p> <p>3 DWIGHT CUSTIS LEE BROOKS</p> <p>4 being first duly sworn and affirmed to testify to the</p> <p>5 truth, the whole truth, and nothing but the truth, was</p> <p>6 examined and testified as follows:</p> <p>7 EXAMINATION BY COUNSEL FOR THE DEFENDANTS</p> <p>8 BY MR. SOMENSATTO:</p> <p>9 Q. Morning, Mr. Brooks. My name is Jason</p> <p>10 Somensatto. I am with law firm of Morvillo, LLP. We</p> <p>11 represent the defendants in this case that the SEC has</p> <p>12 filed, Bonan and Nan Huang.</p> <p>13 Have you ever been deposed before?</p> <p>14 A. I have not.</p> <p>15 Q. I'm sure your counsel has kind of explained</p> <p>16 what's going to happen here, but basically I'll be</p> <p>17 asking you a series of questions. The court reporter</p> <p>18 here is going to be writing down everything we say, so</p> <p>19 if you could, just wait until I get to the complete end</p> <p>20 of a question before you provide your answer. And</p> <p>21 similarly, I'll wait 'til you give your complete answer</p> <p>22 before I start my next question. Makes the transcript a</p> <p>23 lot easier. Does that make sense?</p> <p>24 A. Yes.</p> <p>25 Q. If you don't know the answer to a question,</p>	<p>1 Q. Go ahead, you can answer.</p> <p>2 A. It's in Goochland County.</p> <p>3 Q. From time to time, the SEC or some other</p> <p>4 counsel here might make an objection. It's for the</p> <p>5 record. You can go ahead and answer unless you've been</p> <p>6 instructed by your counsel not to answer.</p> <p>7 You mentioned you've never been deposed</p> <p>8 before. Have you ever testified at trial?</p> <p>9 A. I have not.</p> <p>10 Q. What's your position at Capital One?</p> <p>11 A. Senior Director of the data analyst within the</p> <p>12 Card Operations organization.</p> <p>13 Q. Can you give me a quick description of what</p> <p>14 your responsibilities are in that job?</p> <p>15 A. Yes. I lead a fairly large team of data</p> <p>16 analysts that support different business areas within</p> <p>17 Card Operations. Those business areas would be</p> <p>18 recoveries, collections, fraud, and servicing. Much of</p> <p>19 our work deals with writing computer code to extract</p> <p>20 data, perform analysis, do reporting at a very high</p> <p>21 level.</p> <p>22 Q. So the analysts who work under you are the</p> <p>23 ones who are writing code for the purposes of these</p> <p>24 different functions regarding recoveries, fraud,</p> <p>25 collections, that type of stuff? Is that accurate?</p>

<p style="text-align: right;">9</p> <p>1 A. There are various levels under me. Some 2 people manage people, and their primary function is 3 managing people, but as you get lower in level, they are 4 the people writing the code. 5 MR. PETERSON: I want to ask you to wait until 6 the questions are fully out there just so the transcript 7 reads properly. You answered that a little quickly. I 8 want to make sure the transcript is clear. 9 BY MR. SOMENSATTO: 10 Q. Can you explain to me -- you mentioned people 11 below you -- where you sit within your group and within 12 the company? 13 A. Yes. As I said, I'm Senior Director. I 14 report into a managing vice president. Directly below 15 me, I have a team of other directors and senior managers 16 that report in to me. And then layers below that you 17 would have people who might be principal associates, 18 senior associates, and associates. 19 Q. How many people directly report to you? 20 A. Directly report to me? 21 Q. Approximately. 22 A. It's currently five people. 23 Q. And then underneath those five people, how 24 many people are there regardless of level? 25 A. I tell you in total with me included, it's</p>	<p style="text-align: right;">11</p> <p>1 Q. So is Card Operations the biggest sector 2 within Capital One when you compare it to those other 3 what you were saying; car financing and consumer 4 banking? 5 MR. PETERSON: Objection. Vague as to 6 "biggest." 7 BY MR. SOMENSATTO: 8 Q. The most people working in that area. 9 I ask because I think of Capital One as a 10 credit card company, but if I am mistaken about how it's 11 structured within the company, correct me. But is it 12 accurate that Card Operations is the largest operation 13 in terms of number of people working there in Capital 14 One? 15 A. I can't say that I actually know the numbers 16 across the different organizations so speak to. 17 Q. So are your typical job responsibilities 18 mainly related to managing other people, or are you 19 actually writing code and doing that kind of work? 20 MR. PETERSON: Objection to form. 21 MR. INGOGLIA: Objection. 22 THE WITNESS: The primary responsibility of my 23 job role is to manage and lead teams. I will at times 24 still get into the coding. 25</p>
<p style="text-align: right;">10</p> <p>1 about 85 people. 2 Q. So basically you're the top of a pyramid 3 within the company that 85 people report to? 4 A. I report obviously up to somebody as well, but 5 85 people reporting to me, yes, sir. 6 Q. Okay. And all the people that report to you 7 are in the sector that is doing data analysis of 8 cardholder transactions? Is that accurate? 9 A. It would be data analysis of within Card 10 Operations. It may deal with cardholder transactions. 11 It could deal with other subject areas. 12 Q. Can you explain to me what Card Operations is 13 for a lay person who is not involved in the credit card 14 industry? 15 A. Yeah. Card Operations would be for anybody 16 using a Capital One credit card. It would be that 17 sector of the business within Capital One that I am 18 supporting in terms of data analysis. 19 Q. Can you give me a sense like what other areas 20 outside of card operations as credit does Capital One 21 have? 22 A. Yeah. Outside of Card Operations, there would 23 be our bank operations who would deal with retail 24 banking. There are auto finance areas which would deal 25 with car loans. Those are a couple of examples for you.</p>	<p style="text-align: right;">12</p> <p>1 Q. In that role, do you make hiring and firing 2 decisions within your group? 3 A. The hiring and firing, I will say I can 4 influence it. 5 Q. So when you say you can influence it, what 6 does that mean? You can give recommendations to others 7 who make the ultimate decision? 8 A. There are other people that can influence the 9 size of my team, how many people I need to have on staff 10 besides myself. 11 Q. How long have you been in your current 12 position? 13 A. As a Senior Director, about two years. 14 Q. And how long have you been at Capital One? 15 A. I have been at Capital One since 16 September 1996. 17 Q. Let's just do this in whatever way is easiest 18 for you, if it's chronological order going forward or 19 backwards. But can you tell me the other positions 20 you've held at Capital One? I know it's a long career. 21 A. So September 1996 I started in call centers. 22 Do you need specific names of the different call 23 centers? 24 Q. Well, what is the call center related to? 25 A. The one I started in was retention. I was in</p>

<p style="text-align: right;">13</p> <p>1 call centers until the year 2000 and then moved over to</p> <p>2 data analyst role. From that point on I've actually</p> <p>3 been in Card Operations in data analyst roles the entire</p> <p>4 time. In either working in the various business areas,</p> <p>5 for example, I started in the servicing side, shifted to</p> <p>6 collections, and then my role expanded to where I was</p> <p>7 over -- basically had people reporting to me in</p> <p>8 collections and recoveries, then collections,</p> <p>9 recoveries, servicing and fraud.</p> <p>10 Q. And have you always been in the Richmond</p> <p>11 offices of Capital One?</p> <p>12 A. I have always been in Richmond offices within</p> <p>13 Capital One.</p> <p>14 Q. Where did you work before Capital One?</p> <p>15 A. Had various jobs that would be part-time roles</p> <p>16 for the most part, some of them at various banks, some</p> <p>17 of them at retail outlets until I started at Capital</p> <p>18 One.</p> <p>19 Q. What's your highest level of education?</p> <p>20 A. I have a master's degree.</p> <p>21 Q. What's your master's in?</p> <p>22 A. Business Analytics.</p> <p>23 Q. And when did you get that?</p> <p>24 A. 2015.</p> <p>25 Q. Congratulations.</p>	<p style="text-align: right;">15</p> <p>1 A. I had a mathematics degree which played well</p> <p>2 into the data analyst role, and the additional training,</p> <p>3 you could take different technical courses to get the</p> <p>4 technical skills you needed as you went through.</p> <p>5 Q. The math degree was from Hampden-Sydney?</p> <p>6 A. That's correct.</p> <p>7 Q. Did you have, like, were you trained in</p> <p>8 writing certain types of computer code or have you been</p> <p>9 trained in since you started in data analyst?</p> <p>10 A. I did take training classes early on. Most of</p> <p>11 my skill set was in SQL code which is very simple</p> <p>12 language.</p> <p>13 MR. SOMENSATTO: Let's get this marked as</p> <p>14 Exhibit 1.</p> <p>15 (Brooks Exhibit No. 1, Subpoena, was marked</p> <p>16 for Identification.)</p> <p>17 BY MR. SOMENSATTO:</p> <p>18 Q. Mr. Brooks, I'm handing you what I've had</p> <p>19 marked as Exhibit 1 which is a copy of the subpoena that</p> <p>20 we originally served on Capital One, also a schedule of</p> <p>21 the deposition topics for today, and a listing of</p> <p>22 companies that the SEC actually filed that at least we</p> <p>23 understand to be certain companies that the SEC alleges</p> <p>24 that our clients traded upon information obtained from</p> <p>25 Capital One.</p>
<p style="text-align: right;">14</p> <p>1 A. Thank you.</p> <p>2 Q. And where did you get that master's from?</p> <p>3 A. Virginia Commonwealth University.</p> <p>4 Q. Before that, do you have an undergraduate</p> <p>5 degree from a four-year college?</p> <p>6 A. Yes.</p> <p>7 Q. From where?</p> <p>8 A. Hampden-Sydney College.</p> <p>9 Q. And when did you obtain that degree?</p> <p>10 A. 1992.</p> <p>11 Q. So after graduating Hampden-Sydney in 1992,</p> <p>12 until the time that you joined Capital One in 1996,</p> <p>13 during that entire period there was just a variety of</p> <p>14 part-time jobs; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Do you have any kind of certificates or</p> <p>17 specialty training in a particular area?</p> <p>18 A. I have internal certificates from Capital One</p> <p>19 in areas like business process management, agile</p> <p>20 training, design thinking is another one.</p> <p>21 Q. You said you got involved in the data analyst</p> <p>22 role starting in 2000, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Was there some specific training you needed to</p> <p>25 become a data analyst?</p>	<p style="text-align: right;">16</p> <p>1 As you'll see, I can represent for the record</p> <p>2 on the subpoena that we had asked you to testify at our</p> <p>3 New York offices but through agreement with counsel,</p> <p>4 we're here today. But I'd like you to flip to the</p> <p>5 second document in there, the Schedule A of deposition</p> <p>6 topics.</p> <p>7 A. (Witness complies.)</p> <p>8 Q. First, I'm just going to go through these</p> <p>9 topics one at a time, and I want you to just let me know</p> <p>10 if you are able to testify on behalf of Capital One</p> <p>11 about each topic.</p> <p>12 So the first one says "the database -- so the</p> <p>13 preamble to this section is that "The Deponent," which</p> <p>14 is you, 'shall be knowledgeable about the following</p> <p>15 topics: The database of credit cards sales/purchases</p> <p>16 maintained by Capital One and accessible by Bonan and</p> <p>17 Nan Huang during their employment at Capital One,</p> <p>18 including how the database works, the scope of</p> <p>19 information available on the database, and how the</p> <p>20 information on the database can be stored and</p> <p>21 manipulated."</p> <p>22 Do you see that section?</p> <p>23 A. Yes.</p> <p>24 Q. Are you knowledgeable about that topic?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">17</p> <p>1 Q. And I mean, we have discussed here that you</p> <p>2 are basically in a senior position in the data analyst</p> <p>3 role. Do the data analysts work with the database that</p> <p>4 we're referencing here?</p> <p>5 A. They do.</p> <p>6 Q. And what's the name of that database?</p> <p>7 A. The product is a Teradata product.</p> <p>8 Q. So it's a product made by a third party named</p> <p>9 Teradata?</p> <p>10 A. The company that creates the database</p> <p>11 management system is Teradata.</p> <p>12 Q. Does it have a proprietary name that you guys</p> <p>13 use within Capital One, or do you call it by any</p> <p>14 shorthand?</p> <p>15 A. We call it One View or One Ops.</p> <p>16 Q. Is there any reason for the two names? Is</p> <p>17 there any distinction between what they mean?</p> <p>18 A. One View is used by the -- is a user container</p> <p>19 and database that can be accessed by the general users.</p> <p>20 One ops is more for operational processes and has a</p> <p>21 restricted access on it.</p> <p>22 Q. When you say "general users," who do you mean?</p> <p>23 A. For example, people within my organization</p> <p>24 would be accessing One View directly.</p> <p>25 Q. And so when we talk about One Ops as having</p>	<p style="text-align: right;">19</p> <p>1 or at some point? Do you have, like, background</p> <p>2 knowledge before knowing about this deposition about</p> <p>3 that topic?</p> <p>4 A. That would be in preparation for today.</p> <p>5 Q. Okay. And was preparation done with</p> <p>6 Mr. Peterson here or with counsel for Capital One?</p> <p>7 A. Internal and external counsel. We prepared</p> <p>8 for about five hours yesterday.</p> <p>9 Q. I don't want you to tell me anything you guys</p> <p>10 talked about. That's privileged, but you mentioned that</p> <p>11 you met for about five hours. Is that the period in</p> <p>12 which you were informed about this topic?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And the topic is worded to ask if you</p> <p>15 are knowledgeable about Capital One's market share in</p> <p>16 general and says, if possible, with respect to each of</p> <p>17 the individual companies.</p> <p>18 Were you able to be educated about the market</p> <p>19 share that Capital One has with respect to each of those</p> <p>20 individual companies?</p> <p>21 MR. PETERSON: I object and ask, so that we</p> <p>22 don't thread on any attorney/client privilege, can you</p> <p>23 ask if he currently has knowledge or information with</p> <p>24 regard to those topics?</p> <p>25 MR. SOMENSATTO: Yes.</p>
<p style="text-align: right;">18</p> <p>1 restricted access, who is that limited to?</p> <p>2 A. Tech is the primary user of the One Ops</p> <p>3 version.</p> <p>4 Q. Who is tech or what is tech?</p> <p>5 A. IT, information technology.</p> <p>6 Q. I will probably come back to talk about this</p> <p>7 topic, but I want to move on to the next one in the</p> <p>8 schedule that you're looking at.</p> <p>9 No. 2 says: "Capital One's market share in</p> <p>10 the U.S. credit card industry with respect to all credit</p> <p>11 card purchases, and, if possible, with respect to credit</p> <p>12 card purchases made at each of the individual companies</p> <p>13 listed in Attachment A."</p> <p>14 And if you see Attachment A, is the other</p> <p>15 document behind it. Are you knowledgeable about that</p> <p>16 topic, or have you obtained knowledge for purposes of</p> <p>17 this deposition about that topic at all?</p> <p>18 MR. KELLY: Object to the form of the</p> <p>19 question.</p> <p>20 MR. PETERSON: Same objection.</p> <p>21 BY MR. SOMENSATTO:</p> <p>22 Q. You can answer, go ahead.</p> <p>23 A. I've been informed enough to speak to it, yes.</p> <p>24 Q. Okay. And when you say you've been informed</p> <p>25 enough to speak of it, is that in preparation for today</p>	<p style="text-align: right;">20</p> <p>1 BY MR. SOMENSATTO:</p> <p>2 Q. Do you have information or knowledge regarding</p> <p>3 those topics?</p> <p>4 A. Yes, we actually don't know the market share</p> <p>5 of Capital One.</p> <p>6 Q. Okay. Do you know if there's anybody else</p> <p>7 within Capital One who does have that information?</p> <p>8 A. Capital One does not know.</p> <p>9 Q. All right, moving to No. 3. It says: "The</p> <p>10 information that Bonan and Nan Huang allegedly accessed,</p> <p>11 saved or printed from Capital One's database of credit</p> <p>12 card sales/purchases for their personal use during their</p> <p>13 employment at Capital One."</p> <p>14 Do you have knowledge about that topic?</p> <p>15 A. Yes.</p> <p>16 Q. Is that knowledge you had before prepping for</p> <p>17 the deposition today?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. I'm going to come back to that later.</p> <p>20 No. 4 says: "The information, if any, that</p> <p>21 Capital One sells to third parties about credit card</p> <p>22 sales/purchases made using Capital One credit cards,</p> <p>23 including any information selected or aggregated from</p> <p>24 the database that Bonan and Nan Huang had access to and</p> <p>25 which was sold to third parties.</p>

Conducted on October 14, 2015

6 (Pages 21 to 24)

<p style="text-align: right;">21</p> <p>1 "As part of testimony on this topic, the</p> <p>2 witness should be knowledgeable about what information</p> <p>3 is sold to third parties, the terms of those deals, and</p> <p>4 the timing of when information is sold."</p> <p>5 A. Yes.</p> <p>6 Q. Are you knowledgeable about that topic at this</p> <p>7 point?</p> <p>8 A. Yes.</p> <p>9 Q. And was this knowledge that you had before</p> <p>10 prepping for the deposition today?</p> <p>11 A. It was not.</p> <p>12 Q. No. 5 on the second page there is: "Bonan and</p> <p>13 Nan Huang's work history with Capital One, as well as</p> <p>14 their personal files and the circumstances surrounding</p> <p>15 their termination as employees of Capital One."</p> <p>16 Do you have knowledge about that topic?</p> <p>17 A. I do.</p> <p>18 Q. Actually, I'm going to use that to jump off.</p> <p>19 How did you know Bonan and Nan Huang?</p> <p>20 A. They worked within our Fraud Disputes Data</p> <p>21 Analyst Department. They were several positions below</p> <p>22 me. In other words, they did not report directly to me,</p> <p>23 but they reported up through me within my organization.</p> <p>24 Q. So they were one of the 85 people that would</p> <p>25 fall under your organization?</p>	<p style="text-align: right;">23</p> <p>1 the same area as I did, so it was more of the casual</p> <p>2 conversations here and there. I knew more of their work</p> <p>3 performance through their management chain.</p> <p>4 Q. Was it the same way with Nan then?</p> <p>5 A. Same with both.</p> <p>6 Q. You mentioned management chain. Explain the</p> <p>7 management chain from where they were up to you,</p> <p>8 identifying who was each person in each role?</p> <p>9 A. Okay. So Bonan and Huang report in to a</p> <p>10 manager who reports in to a director and that director</p> <p>11 reports to me.</p> <p>12 Q. During their employment at Capital One, were</p> <p>13 the manager and director the same people throughout that</p> <p>14 period?</p> <p>15 A. They were not.</p> <p>16 Q. Do you know who the managers and directors</p> <p>17 were throughout their employment at Capital One?</p> <p>18 A. There are many changes that happen in their</p> <p>19 tenure at Capital One, so I do not know each change in</p> <p>20 direct management chain.</p> <p>21 Q. Let's start with the manager that they</p> <p>22 reported to. I mean, can you give me the names of</p> <p>23 whichever managers you do recall them reporting to?</p> <p>24 This is with respect to Bonan. We'll do this separately</p> <p>25 for Nan.</p>
<p style="text-align: right;">22</p> <p>1 A. Correct.</p> <p>2 Q. Approximately.</p> <p>3 Did you know them personally?</p> <p>4 A. I did, yes.</p> <p>5 Q. How frequent were your personal interactions</p> <p>6 with them?</p> <p>7 A. Rather infrequent.</p> <p>8 Q. Would you say, if you can estimate, once a</p> <p>9 month you would have conversations with them, once a</p> <p>10 week?</p> <p>11 MR. PETERSON: Objection. Vague as to whether</p> <p>12 you're talking about Bonan or Nan.</p> <p>13 MR. SOMENSATTO: Let's separate them. That's</p> <p>14 a good point.</p> <p>15 BY MR. SOMENSATTO:</p> <p>16 Q. Obviously we represent both Bonan and Nan in</p> <p>17 this case, and I'm going to ask you questions about both</p> <p>18 of them, but I would like, to the best of your ability,</p> <p>19 to separate, you know, the two people as two people and</p> <p>20 tell me with respect to each, you know, your answers</p> <p>21 when I ask you about them if that makes sense.</p> <p>22 So how frequently, let's start with Bonan,</p> <p>23 would you interact with Bonan?</p> <p>24 A. I would say my personal interactions were</p> <p>25 pretty infrequent. They did sit within the same floor,</p>	<p style="text-align: right;">24</p> <p>1 A. Okay. So the current structure or when they</p> <p>2 were terminated was that Bonan reported into David</p> <p>3 Samuel and the director was Matt Panas.</p> <p>4 Q. Want to spell that for the court reporter, if</p> <p>5 you know?</p> <p>6 A. It M-a-t-t P-a-n-a-s.</p> <p>7 Q. So that was the manager and director that were</p> <p>8 the most recent manager and director that they reported</p> <p>9 to before they were let go; is that correct?</p> <p>10 A. Correct.</p> <p>11 Q. Or that Bonan reported to?</p> <p>12 A. Correct. So --</p> <p>13 Q. Go ahead.</p> <p>14 A. Bonan started July 2011, and, again, different</p> <p>15 reporting structure. The hiring manager at that time</p> <p>16 was Nilesh Bhandare.</p> <p>17 Q. Can you spell that?</p> <p>18 A. N-i-l-e-s-h B-h-a-n-d-a-r-e.</p> <p>19 Q. And this was all a chain within fraud</p> <p>20 disputes?</p> <p>21 A. Bonan, David and Matt Panas all worked within</p> <p>22 the specific area of fraud disputes.</p> <p>23 Q. Can you describe for me in lay terms, if</p> <p>24 possible, what fraud disputes handle within Capital One?</p> <p>25 A. They basically support credit card -- they</p>

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0813

<p style="text-align: right;">25</p> <p>1 look for credit card fraudulent activity where you might</p> <p>2 have people making fraudulent transactions against</p> <p>3 legitimate cardholders or leveraging payments to commit</p> <p>4 fraud. So they're looking for those types of</p> <p>5 transactions.</p> <p>6 We also in the dispute side, current customers</p> <p>7 call in to dispute charges, so there's a part of our</p> <p>8 network that supports customers who call in to say this</p> <p>9 charge is not legitimate and it begins an analysis of</p> <p>10 those charges.</p> <p>11 Q. With respect to -- well, were the job</p> <p>12 responsibilities of Bonan and Nan different?</p> <p>13 A. They were different.</p> <p>14 Q. Can you explain that to me, like which role</p> <p>15 each of them had?</p> <p>16 A. Yes. I'll start with Bonan.</p> <p>17 Q. Perfect.</p> <p>18 A. He had a long history so job -- I will tell</p> <p>19 you job roles change over time. I will say the most</p> <p>20 kind of recent history over the past year, kind of 2014</p> <p>21 onwards, has been transaction fraud, which means he is</p> <p>22 looking for activity that deals with transactions that</p> <p>23 could be identified as fraudulent transactions.</p> <p>24 Q. Okay. And how about Nan?</p> <p>25 A. Nan's role was very different. He was in a</p>	<p style="text-align: right;">27</p> <p>1 Q. What is Matt Panas's role? Like what's his</p> <p>2 job title, do you know?</p> <p>3 A. He is Director Data Analysis of the fraud</p> <p>4 disputes area.</p> <p>5 Q. So does he manage all of fraud disputes?</p> <p>6 A. Just the data analyst. Fraud disputes as a</p> <p>7 whole is a larger organization.</p> <p>8 Q. That reminds me, one of the questions I wanted</p> <p>9 to ask was: So I understand the looking for fraud in</p> <p>10 credit card transactions, what does a data analyst like</p> <p>11 Bonan do to help achieve that? Are they running --</p> <p>12 well, you tell me. What does a data analyst in that</p> <p>13 area do?</p> <p>14 A. So there are three primary things that a data</p> <p>15 analyst, I would say, support. One is reporting. So</p> <p>16 that would be reports on -- that would be reporting on</p> <p>17 agent performance, for example. Agents handle these</p> <p>18 fraud disputes calls that come in every day in a call</p> <p>19 center. So somebody is supporting that particular</p> <p>20 transaction area will provide performance reporting on</p> <p>21 those agents, for example. There is reporting.</p> <p>22 There is analysis. So analysis could be on</p> <p>23 certain customer transactions that maybe may need</p> <p>24 research into whether they are fraudulent or not.</p> <p>25 And then I'll say operational solutions. We</p>
<p style="text-align: right;">26</p> <p>1 very specialized area of our Fraud Disputes Department</p> <p>2 called Judgmental Underwriting.</p> <p>3 Q. Go ahead and explain to me what that is.</p> <p>4 A. For credit card applications that come in</p> <p>5 where there is a question whether to give the customer</p> <p>6 the credit line they deserve, he supports basically the</p> <p>7 call centers that do that analysis for those</p> <p>8 applications that come in.</p> <p>9 Q. Looking for potential fraud in applications?</p> <p>10 A. It's actually not even fraud. It's really</p> <p>11 supporting the call center to make sure that -- to give</p> <p>12 them information on their performance.</p> <p>13 Q. Okay.</p> <p>14 A. How the agents that are handling the analysis</p> <p>15 are performing.</p> <p>16 Q. But he was still within the group that would</p> <p>17 be considered fraud disputes?</p> <p>18 A. Yes.</p> <p>19 Q. Let's go to Bonan. Well, before I do that,</p> <p>20 let me get who Nan reported to, at least most recently</p> <p>21 before he was terminated.</p> <p>22 A. Nan reported into Steven Ricker.</p> <p>23 Q. Go ahead and spell Ricker.</p> <p>24 A. R-i-c-k-e-r. Steven reported into Matt Panas;</p> <p>25 Matt reports to me.</p>	<p style="text-align: right;">28</p> <p>1 run automated batch defenses to defend against fraud.</p> <p>2 So it would be like a trigger in case we saw certain</p> <p>3 things happen on a customer's account and it would</p> <p>4 trigger us to say, hey, let's suspend this account and</p> <p>5 not let any more charges come through because we think</p> <p>6 there could be a fraudster using an account.</p> <p>7 BY MR. SOMENSATTO:</p> <p>8 Q. So someone in, let's stick with Bonan, in his</p> <p>9 role, would he see the alert that the fraud was</p> <p>10 happening or would he be the one creating the system to</p> <p>11 catch the fraud?</p> <p>12 MR. PETERSON: Objection, form.</p> <p>13 Q. You can go ahead and answer if you know.</p> <p>14 A. The data analyst writes the code using SQL</p> <p>15 against our Teradata databases.</p> <p>16 Q. That will help identify the fraud?</p> <p>17 A. Correct.</p> <p>18 Q. What about what was, if you can, Nan's</p> <p>19 functions within his role in judgmental overwriting with</p> <p>20 respect to being a data analyst on that topic?</p> <p>21 MR. KELLY: Objection to form.</p> <p>22 Q. Go ahead, you can answer if you understand.</p> <p>23 If you ever don't understand a question, please just let</p> <p>24 me know and I'll try to reword it.</p> <p>25 MR. PETERSON: Do you understand the question?</p>

<p style="text-align: right;">29</p> <p>1 THE WITNESS: I do.</p> <p>2 Generically the function is the same, it's</p> <p>3 reporting analysis and operational solutions within his</p> <p>4 particular role. It was very much call center agent</p> <p>5 based on the performance of the call center agents</p> <p>6 themselves.</p> <p>7 BY MR. SOMENSATTO:</p> <p>8 Q. Going back to Bonan, for what reason would he</p> <p>9 access the Teradata database pursuant to his job</p> <p>10 function?</p> <p>11 A. So as a data analyst, that is his core job, is</p> <p>12 to write SQL code against our databases. So that is the</p> <p>13 core functionality that he would use if not every day,</p> <p>14 pretty close.</p> <p>15 Q. When he would write code, would he be</p> <p>16 accessing -- well, would he be downloading any</p> <p>17 information from the database for any reason?</p> <p>18 A. Can you rephrase that question, please?</p> <p>19 Q. I can try.</p> <p>20 My very elementary understanding of a</p> <p>21 database, right, would be somewhere that stores a lot of</p> <p>22 information and there could be inputs into it in the</p> <p>23 terms of computer code that tell it, you know, spit out</p> <p>24 this information or run this function. And then there</p> <p>25 could be the actual running of that function to access</p>	<p style="text-align: right;">31</p> <p>1 some network system with respect to the database?</p> <p>2 MR. PETERSON: Objection to form.</p> <p>3 MR. KELLY: I am going to object to form. I</p> <p>4 do think that you should probably stick with Bonan and</p> <p>5 Nan so that we don't have a muddled record.</p> <p>6 MR. SOMENSATTO: I guess one of the topics of</p> <p>7 the deposition notice is how this database works, that's</p> <p>8 all I am trying to understand, and how it relates to</p> <p>9 their job responsibilities. I mean, you can feel free</p> <p>10 to answer with respect to Bonan and Nan but --</p> <p>11 MR. KELLY: I am just going to object to the</p> <p>12 extent that the question doesn't separate out between</p> <p>13 Bonan and Nan's job responsibilities. Because the</p> <p>14 witness already said the job responsibilities are</p> <p>15 different.</p> <p>16 MR. PETERSON: My objection was to the extent</p> <p>17 you characterize the database working in one manner or a</p> <p>18 different manner, which may or may not be relevant.</p> <p>19 BY MR. SOMENSATTO:</p> <p>20 Q. Mr. Brooks, my understanding from this case is</p> <p>21 that there was certain information that, let's say,</p> <p>22 Bonan, start with him, accessed from the database and</p> <p>23 saved locally on his computer. Is that correct?</p> <p>24 A. He can manipulate data within the database</p> <p>25 itself. He can also download that information to his</p>
<p style="text-align: right;">30</p> <p>1 the information in which case they would be obtaining</p> <p>2 information as opposed to just inputting code.</p> <p>3 Did their job responsibilities -- well, first</p> <p>4 of all, is that an accurate description of what we're</p> <p>5 talking about here?</p> <p>6 A. Yes.</p> <p>7 Q. Did their job responsibilities include</p> <p>8 actually pulling information off the database?</p> <p>9 MR. KELLY: Object to the form of the</p> <p>10 question.</p> <p>11 MR. PETERSON: Same objection.</p> <p>12 BY MR. SOMENSATTO:</p> <p>13 Q. Do you understand?</p> <p>14 A. I understand.</p> <p>15 So the Teradata database is a massive database</p> <p>16 management system. There's data that flows into it from</p> <p>17 production sources. Production sources would be our</p> <p>18 actual call systems, our transaction systems. Someone</p> <p>19 like Bonan would access that data so they would be able</p> <p>20 to pull it or extract it to see the data and information</p> <p>21 in it, but they also have the capability to manipulate</p> <p>22 and create their own tables and manipulate the data to</p> <p>23 meet the needs for their business area.</p> <p>24 Q. As part of that latter ability, is anything</p> <p>25 saved locally on their computers or is it all saved on</p>	<p style="text-align: right;">32</p> <p>1 desktop hard drive if he likes.</p> <p>2 Q. My question was: Was any part of his job</p> <p>3 responsibilities, did it require him to download that</p> <p>4 information when he was -- well, I'll leave it at that.</p> <p>5 A. Any data analyst is likely to download</p> <p>6 information to their hard drive desktop at some point,</p> <p>7 yes.</p> <p>8 Q. Did Capital One have any restrictions that</p> <p>9 would have prohibited Bonan from downloading information</p> <p>10 and saving it on his personal computer to the extent</p> <p>11 that he was trying to fulfill his job functions?</p> <p>12 A. Can you rephrase that question one more time?</p> <p>13 Q. As part of Bonan's job responsibilities, was</p> <p>14 there any restriction on his ability to download and</p> <p>15 save information on his computer?</p> <p>16 A. The restrictions would be that the data that</p> <p>17 he is downloading should be limited to business purpose</p> <p>18 use only.</p> <p>19 Q. Okay. Was there any monitoring to determine</p> <p>20 whether the information they downloaded was for business</p> <p>21 purposes, monitoring by Capital One?</p> <p>22 MR. KELLY: Objection to form.</p> <p>23 MR. PETERSON: Objection to form.</p> <p>24 BY MR. SOMENSATTO:</p> <p>25 Q. Do you understand the question?</p>

<p style="text-align: right;">33</p> <p>1 A. Yep. There is monitoring of usage of Teradata 2 in terms of impacting the system, and there are controls 3 around access to different data tables. At the same 4 time, again, it should be limited to business purpose, 5 and there's an expectation that the associates know that 6 and are using it for that purpose. 7 Q. I'm going to give you an example for my life 8 just to see if this actually applies in Capital One, and 9 it may not. You can tell me I'm crazy. I worked at a 10 law firm where we have a database of information. I am 11 allowed to access that, look at it, save stuff to it, 12 but I'm not allowed to save anything on my actual local 13 computer from that. 14 Was something like that in place at Capital 15 One? 16 MR. PETERSON: Objection to vagueness of the 17 question. 18 BY MR. SOMENSATTO: 19 Q. Does the question make sense to you? 20 A. Yes, the question makes sense to me. 21 You can save things locally on your hard drive 22 on your Capital One laptop, not your personal laptop. 23 Q. You mentioned that there's monitoring of 24 Teradata. Limited to the roles that Bonan and Nan had, 25 what kind of -- well, explain to me what monitoring is</p>	<p style="text-align: right;">35</p> <p>1 MR. SOMENSATTO: He is the one who said that 2 there's -- 3 BY MR. SOMENSATTO: 4 Q. There is monitoring of Teradata, right? 5 A. Of system performance. 6 Q. What is system performance? 7 A. Query performance. 8 Q. Right. The query performance being code 9 that's entered into Teradata, right? 10 A. Correct. 11 Q. And that, I presume, is done by a group of 12 people in IT who monitor Teradata; am I correct? 13 A. Correct. 14 Q. My question is: Is any part of that 15 monitoring looking at whether queries are being 16 performed for potential nonbusiness purposes? 17 A. That particular monitoring is not monitoring 18 for what you've stated. 19 Q. Did Nan and Bonan have the same access to the 20 database as each other or did one have greater access? 21 If that makes sense. 22 MR. PETERSON: Objection, form and vagueness. 23 BY MR. SOMENSATTO: 24 Q. Does it make sense to you? Sorry, I'm talking 25 in technical language that I don't fully understand</p>
<p style="text-align: right;">34</p> <p>1 done of Teradata. 2 A. So it's a system with a massive number of 3 users, thousands of users on Teradata. The system can 4 be impacted by one user using it inappropriately. And 5 what I mean by that is an efficient query or efficient 6 SQL statement they have written can impact the entire 7 user base. 8 We have people in our information technology 9 area that monitor for queries that will tax the system 10 to a point it is impacting all the other users, and they 11 will notify those users if that occurs. 12 Q. Does that occur frequently? 13 MR. PETERSON: Objection. 14 Q. How frequently does that occur that something 15 is found that may impact the entire system? 16 A. I'm not sure of the frequency. I'm not the 17 monitor person. 18 Q. Is there any monitoring of Teradata that is 19 looking to whether employees are using the information 20 for nonbusiness purposes? 21 MR. KELLY: Objection to form. 22 MR. PETERSON: Same objection. 23 MR. SOMENSATTO: What's the basis of the 24 objection? 25 MR. KELLY: Monitoring is vague.</p>	<p style="text-align: right;">36</p> <p>1 personally but -- 2 A. There are honestly so many different roles, I 3 don't know exactly the roles that they had for the 4 Teradata database. 5 Q. Okay. But based on individual employees, can 6 the level of access change significantly? 7 MR. PETERSON: Objection, vague. We haven't 8 established if there are levels of access or what we're 9 talking about here when we talk about access. 10 Q. We did talk about general users and restricted 11 access of One Ops. And, I guess, that's my basic 12 question: Is there some difference in how Bonan could 13 interact with the database as opposed to Nan? 14 MR. KELLY: Object as vague. 15 A. They may have access to different tables based 16 on their roles. 17 Q. So certain tables can be cut off from one 18 employee based on their job functions? 19 A. Correct. 20 Q. Sorry. Thank you for your patience with this. 21 What training did Bonan and Nan have on how to 22 use Teradata or should I refer to it as One View? Is 23 that a more accurate description? 24 A. Either is fine. 25 Q. Okay. What training did they have on the</p>

<p style="text-align: right;">37</p> <p>1 database, on how to use the database?</p> <p>2 A. The technical training, I'm not sure exactly</p> <p>3 what technical training classes they had taken. The</p> <p>4 training I would highlight is the usage of the data and</p> <p>5 the proper usage of the data. They had training on the</p> <p>6 need to use it for business purposes only and limited</p> <p>7 for business purposes.</p> <p>8 Q. Was that independent training on just that</p> <p>9 topic or was that part of some broader training?</p> <p>10 MR. PETERSON: Objection, form.</p> <p>11 BY MR. SOMENSATTO:</p> <p>12 Q. Go ahead, you can answer.</p> <p>13 A. They had very specific CBTs, which are</p> <p>14 computer based training modules, that they had to take</p> <p>15 on an annual basis that stated those requirements.</p> <p>16 Q. I understand that training was done on a</p> <p>17 computer but was it a video that they watched or was it</p> <p>18 a test that they had to take?</p> <p>19 A. It is, like I said, a computer-based training</p> <p>20 with a series of video or slides that they go through.</p> <p>21 I can't say this for all CBTs. Most CBTs do have a test</p> <p>22 you have to complete at the end, but you have to at</p> <p>23 least fulfill completion of the CBT.</p> <p>24 Q. And that's annual training?</p> <p>25 A. Code of conduct definitely is annual, that's</p>	<p style="text-align: right;">39</p> <p>1 reviews with their managers?</p> <p>2 A. They would have oral reviews with their</p> <p>3 managers.</p> <p>4 Q. And then their managers would also prepare</p> <p>5 written reviews?</p> <p>6 A. Written reviews are prepared as well.</p> <p>7 Q. Did you prepare written reviews or did you</p> <p>8 just review other people's written reviews?</p> <p>9 MR. PETERSON: Objection, form.</p> <p>10 THE WITNESS: Can you rephrase the question?</p> <p>11 BY MR. SOMENSATTO:</p> <p>12 Q. Did you prepare written reviews about Bonan</p> <p>13 and Nan?</p> <p>14 A. Not for Bonan and Nan, no.</p> <p>15 Q. But you reviewed the written reports about</p> <p>16 them?</p> <p>17 A. We have a meeting where we discuss the</p> <p>18 performance and rating of each associate in our</p> <p>19 department. I'm a key person as part of those</p> <p>20 discussions.</p> <p>21 Q. If you can, and tell me if you can't, but</p> <p>22 generally do you recall how the performance reviews were</p> <p>23 for Bonan? Was he a good employee, was he a bad</p> <p>24 employee? And let's for now put aside the conduct at</p> <p>25 issue in this case, which we'll get to and talk about</p>
<p style="text-align: right;">38</p> <p>1 correct.</p> <p>2 Q. When you say "code of conduct," is the code of</p> <p>3 conduct training with respect just to the database or</p> <p>4 just more generally code of conduct within Capital One?</p> <p>5 MR. PETERSON: Objection, form.</p> <p>6 A. Code of conduct covers all behaviors of</p> <p>7 Capital One.</p> <p>8 Q. We spoke a while ago about your kind of</p> <p>9 informal communications, if any, or interactions with</p> <p>10 Bonan and Nan, but I want to get to your formal</p> <p>11 relationship with them with respect to the company.</p> <p>12 Were you involved in reviewing their job</p> <p>13 performance?</p> <p>14 A. Not directly with them. I am involved in</p> <p>15 reviewing their job performance through their management</p> <p>16 chain.</p> <p>17 Q. And, again, I'm going to ask these questions</p> <p>18 with respect to both of them. If there is a distinction</p> <p>19 ever, let me know, otherwise I'm going to have to ask</p> <p>20 every question twice, which could take a lot longer.</p> <p>21 So would you sit in their oral reviews?</p> <p>22 A. Did not sit in their oral reviews. I sat in</p> <p>23 sessions where we rate the performance of the</p> <p>24 associates.</p> <p>25 Q. Did they have oral reviews or face-to-face</p>	<p style="text-align: right;">40</p> <p>1 before then.</p> <p>2 MR. PETERSON: What time period for that?</p> <p>3 BY MR. SOMENSATTO:</p> <p>4 Q. Well, let's establish that. When did you</p> <p>5 learn about the alleged conduct at issue in this case?</p> <p>6 A. It was some time around the beginning of last</p> <p>7 quarter for 2014.</p> <p>8 Q. So before that, how were Bonan's job reviews?</p> <p>9 MR. KELLY: Objection, form.</p> <p>10 Q. You can answer.</p> <p>11 MR. PETERSON: Same objection.</p> <p>12 A. Bonan was a very solid performer. He was</p> <p>13 doing well.</p> <p>14 Q. And how about Nan?</p> <p>15 A. Nan was --</p> <p>16 MR. PETERSON: Same objection.</p> <p>17 MR. KELLY: Same objection.</p> <p>18 Q. Go ahead.</p> <p>19 A. Nan was not a solid performer and was getting</p> <p>20 poor ratings.</p> <p>21 Q. Do you remember what the basis for those poor</p> <p>22 ratings were?</p> <p>23 A. I don't remember the exact basis for the</p> <p>24 ratings other than the conversation with the manager</p> <p>25 that he was not performing the duties as effectively as</p>

<p style="text-align: right;">41</p> <p>1 he should be.</p> <p>2 Q. Do you remember any specific disciplinary</p> <p>3 issues that Capital One had with respect to Bonan before</p> <p>4 the conduct at issue in this case?</p> <p>5 A. No specific disciplinary issues. He was being</p> <p>6 discussed for getting an inconsistent rating.</p> <p>7 Q. What does that mean?</p> <p>8 A. That means he's a lower performer in the</p> <p>9 company.</p> <p>10 Q. This is Bonan or Nan?</p> <p>11 A. Nan. Did you ask me about Nan or Bonan?</p> <p>12 Q. I asked about Nan -- or Bonan, but let's go</p> <p>13 with Nan. We're there.</p> <p>14 A. Sorry.</p> <p>15 Q. That's fine.</p> <p>16 So he was on the verge of getting an</p> <p>17 inconsistent rating?</p> <p>18 A. He was on the verge of getting an inconsistent</p> <p>19 rating.</p> <p>20 Q. Sorry, you were explaining to me what that</p> <p>21 meant?</p> <p>22 A. Means he is a lower performer, likely in the</p> <p>23 lower 15 percent of performers.</p> <p>24 Q. What consequence does that potentially have?</p> <p>25 A. Likely go on a performance plan.</p>	<p style="text-align: right;">43</p> <p>1 like to know which documents you looked at.</p> <p>2 A. So I reviewed documents with the attorneys. I</p> <p>3 reviewed a couple of spreadsheets that I had of pretty</p> <p>4 much the same documents that the attorneys had.</p> <p>5 Q. And what information was on those</p> <p>6 spreadsheets?</p> <p>7 A. Queries that Nan and Bonan had run.</p> <p>8 Q. Any other documents besides those</p> <p>9 spreadsheets?</p> <p>10 A. I did go back to the performance ratings as</p> <p>11 well.</p> <p>12 Q. Is the performance rating something different</p> <p>13 than their written performance reviews? You mentioned a</p> <p>14 meeting where you guys discussed ratings for each</p> <p>15 employee?</p> <p>16 A. Yes, sir, that's what they were, what I</p> <p>17 expected them to be.</p> <p>18 Q. Right. And I asked what are they? Like what</p> <p>19 is a performance rating?</p> <p>20 A. Nan has the inconsistent rating; Bonan was</p> <p>21 going to be a very strong.</p> <p>22 Q. And those documents, were those the outgrowth</p> <p>23 of your meeting with other managers -- with the managers</p> <p>24 of Nan and Bonan?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">42</p> <p>1 Q. How about Bonan, any disciplinary issues?</p> <p>2 A. I'm not aware of any disciplinary issues.</p> <p>3 Q. How are you doing? Do you need a break?</p> <p>4 A. I wouldn't mind a break.</p> <p>5 MR. SOMENSATTO: Let's do it then, five</p> <p>6 minutes or so.</p> <p>7 MR. PETERSON: Off the record.</p> <p>8 (Off-the-record discussion was held.)</p> <p>9 (Short recess taken.)</p> <p>10 BY MR. SOMENSATTO:</p> <p>11 Q. Mr. Brooks, before I get into the substance,</p> <p>12 real substance, I guess, let me ask you a few questions</p> <p>13 about how you prepared for today.</p> <p>14 When were you notified that you would be</p> <p>15 deposed as part of this case?</p> <p>16 A. About a week, week and a half ago.</p> <p>17 Q. And I want you to, again, put aside any</p> <p>18 meeting you had with your attorneys. I don't want to</p> <p>19 hear about that, but did you review any documents in</p> <p>20 preparation for today?</p> <p>21 MR. PETERSON: Other than he might have</p> <p>22 reviewed with attorneys.</p> <p>23 BY MR. SOMENSATTO:</p> <p>24 Q. If you reviewed them even with attorneys, I</p> <p>25 don't want to hear about what you discussed, but I would</p>	<p style="text-align: right;">44</p> <p>1 Q. Any other documents?</p> <p>2 A. No, sir.</p> <p>3 Q. Did you have any meetings with the SEC in</p> <p>4 preparation for today?</p> <p>5 A. Did not.</p> <p>6 Q. Anything else you did to prepare for today</p> <p>7 that I haven't asked about?</p> <p>8 A. No, sir.</p> <p>9 Q. You mentioned you learned about the conduct at</p> <p>10 issue in this case. Well, strike that.</p> <p>11 Before I go there, what is your understanding</p> <p>12 of the allegations in this case?</p> <p>13 MR. PETERSON: Objection, form.</p> <p>14 BY MR. SOMENSATTO:</p> <p>15 Q. You can answer.</p> <p>16 A. My understanding is that Nan and Bonan misused</p> <p>17 the confidential and proprietary information for Capital</p> <p>18 One.</p> <p>19 Q. Do you have any understanding, and tell me if</p> <p>20 you don't, about how they allegedly misused that</p> <p>21 information?</p> <p>22 A. I'm aware that they used the information for</p> <p>23 nonbusiness purposes. I'm also aware that we have</p> <p>24 documents that validate trading.</p> <p>25 Q. When you mentioned nonbusiness purposes, are</p>

<p style="text-align: right;">45</p> <p>1 you talking about trading, or was there some other</p> <p>2 nonbusiness purpose that they used the information too,</p> <p>3 to your understanding?</p> <p>4 MR. PETERSON: Objection, form.</p> <p>5 MR. SOMENSATTO: You can answer.</p> <p>6 MR. KELLY: Same objection.</p> <p>7 THE WITNESS: I would limit it to their using</p> <p>8 the information for nonbusiness purpose.</p> <p>9 BY MR. SOMENSATTO:</p> <p>10 Q. You said you've seen documents regarding</p> <p>11 trading. What documents are those?</p> <p>12 A. An e-mail confirmation of a trade that Bonan</p> <p>13 made.</p> <p>14 Q. When did you see that document? Was it just</p> <p>15 one confirmation?</p> <p>16 A. Let me think for a second, please.</p> <p>17 Q. Go ahead.</p> <p>18 MR. PETERSON: Again, you're not asking him to</p> <p>19 reveal anything that was discussed with the attorneys,</p> <p>20 correct?</p> <p>21 MR. SOMENSATTO: Yes.</p> <p>22 THE WITNESS: Yes, I'm aware of some -- a</p> <p>23 trade document for Nan and Bonan and that's all.</p> <p>24 BY MR. SOMENSATTO:</p> <p>25 Q. Were you aware of that at the time that they</p>	<p style="text-align: right;">47</p> <p>1 management.</p> <p>2 Q. Now, that was just with respect to the trading</p> <p>3 element but now I want to go more generally.</p> <p>4 When was the first time you were notified or</p> <p>5 informed about some potential misuse of Capital One</p> <p>6 information by Bonan and/or Nan?</p> <p>7 MR. PETERSON: Objection to form and it's</p> <p>8 vague.</p> <p>9 MR. KELLY: Same objection.</p> <p>10 BY MR. SOMENSATTO:</p> <p>11 Q. You can answer.</p> <p>12 A. I believe it was December 2013 -- I'm sorry,</p> <p>13 let me rephrase. December 2014. Sorry.</p> <p>14 Q. What did you learn at that time?</p> <p>15 A. At that time I learned that there was a</p> <p>16 potential of misuse of our data at Capital One.</p> <p>17 Q. How did you learn that?</p> <p>18 A. Through legal counsel and a conversation with</p> <p>19 upper management.</p> <p>20 Q. Okay. Putting aside what you talked about</p> <p>21 with them -- well, strike that.</p> <p>22 After were you notified of potential misuse of</p> <p>23 information, what did you do next, or what did you learn</p> <p>24 next about what they were doing?</p> <p>25 MR. PETERSON: Objection to form. And I'm</p>
<p style="text-align: right;">46</p> <p>1 were employed at Capital One?</p> <p>2 MR. PETERSON: Do you understand the question?</p> <p>3 A. Can you rephrase that?</p> <p>4 Q. What I'm trying to get at is I understand --</p> <p>5 well, you have some understanding that the information</p> <p>6 was misused for purposes of trading, at least as alleged</p> <p>7 by the SEC, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And I'm trying to know when did you come to</p> <p>10 that understanding, and what is the basis for that</p> <p>11 understanding?</p> <p>12 MR. PETERSON: Could you rephrase the question</p> <p>13 then?</p> <p>14 Q. So when did you learn that Nan and Bonan</p> <p>15 allegedly used the information for purposes of trading?</p> <p>16 A. That would have been in --</p> <p>17 MR. KELLY: I'm going to object as vague.</p> <p>18 MR. PETERSON: Same objection.</p> <p>19 BY MR. SOMENSATTO:</p> <p>20 Q. You can answer.</p> <p>21 A. January 2015.</p> <p>22 Q. And how did you become aware of that?</p> <p>23 MR. KELLY: Same objection.</p> <p>24 MR. PETERSON: Same objection.</p> <p>25 A. Legal counsel and conversations with upper</p>	<p style="text-align: right;">48</p> <p>1 also going to object to the line of questioning to the</p> <p>2 extent that it may implicate what he learned through</p> <p>3 discussions with attorneys, how he learned of the</p> <p>4 information.</p> <p>5 I don't know, if you want to go there, we can</p> <p>6 talk about how best to structure that, but this is</p> <p>7 getting very close to attorney/client material.</p> <p>8 BY MR. SOMENSATTO:</p> <p>9 Q. And I don't want you to discuss what you've</p> <p>10 discussed with counsel, but the SEC has sued our</p> <p>11 clients. Do you understand that?</p> <p>12 A. Yes.</p> <p>13 Q. At some point did Capital One disclose what</p> <p>14 they had learned about Bonan and Nan to the SEC?</p> <p>15 MR. PETERSON: Objection to scope.</p> <p>16 Q. Do you know?</p> <p>17 A. I don't know what was conveyed to the SEC. I</p> <p>18 know there were interactions between Capital One and the</p> <p>19 SEC.</p> <p>20 Q. Did someone within Capital One identify Bonan</p> <p>21 and Nan's potential misuse of information, if you know?</p> <p>22 MR. PETERSON: I'm going to object to the</p> <p>23 scope again. I don't know if this is covered by the</p> <p>24 topics that you sent to us.</p> <p>25</p>

<p style="text-align: right;">49</p> <p>1 BY MR. SOMENSATTO:</p> <p>2 Q. Well, why were Bonan and Nan terminated?</p> <p>3 A. They were terminated for using confidential</p> <p>4 proprietary information for nonbusiness purposes.</p> <p>5 Q. And what were they doing, as you understand</p> <p>6 it?</p> <p>7 A. So they were using a couple of tables, a</p> <p>8 transaction table and an authorization table, basically</p> <p>9 in a manner and frequency which were inconsistent with</p> <p>10 their job function.</p> <p>11 Q. Transaction table and what was the other one?</p> <p>12 Sorry.</p> <p>13 A. Authorization and transaction tables in a</p> <p>14 manner that was, I would say, frequency, scope that was</p> <p>15 inconsistent with their job functions. And these</p> <p>16 tables, for example, Bonan would hit these tables 12,000</p> <p>17 times over a year's period. Nan, 3,200 times. All</p> <p>18 other users at Capital One, which would be 2,000, 2,500,</p> <p>19 hit these same tables around 3,800 times in total.</p> <p>20 Q. Let's take a step back. What do you mean by</p> <p>21 "table?"</p> <p>22 A. Sorry. So table, if I'm looking at the</p> <p>23 Teradata database, data gets stored in tables, and you</p> <p>24 can think of a table in its most simplistic form as</p> <p>25 columns and rows of data most like you were looking at a</p>	<p style="text-align: right;">51</p> <p>1 Strike that.</p> <p>2 Is that all you know about how they were</p> <p>3 accessing this information?</p> <p>4 MR. PETERSON: Objection.</p> <p>5 MR. KELLY: Objection, form.</p> <p>6 MR. PETERSON: Mischaracterizes the testimony.</p> <p>7 BY MR. SOMENSATTO:</p> <p>8 Q. I'm not trying to characterize your testimony.</p> <p>9 I want to know, you know, what else do you know about</p> <p>10 what they did with this information?</p> <p>11 A. So the only thing I can limit the improper</p> <p>12 usage of the data to is what they did within Capital</p> <p>13 One, which is they were using that information in a</p> <p>14 nonbusiness form. I am aware that there are trades that</p> <p>15 we have documentation of as well.</p> <p>16 Q. I get that. And you can put the trades aside</p> <p>17 for now, but how was Capital One able to determine that</p> <p>18 they were using it for nonbusiness purposes? Other than</p> <p>19 you've mentioned the frequency discussion with me, which</p> <p>20 I understand.</p> <p>21 MR. PETERSON: Objection again to form.</p> <p>22 Mischaracterizes his testimony.</p> <p>23 BY MR. SOMENSATTO:</p> <p>24 Q. Well, okay, we have frequency, they were</p> <p>25 pinged it a lot, is that correct, the database?</p>
<p style="text-align: right;">50</p> <p>1 spreadsheet but it's a database.</p> <p>2 Q. So what is reflected in the transaction table?</p> <p>3 A. Transactions contain information around credit</p> <p>4 card -- Capital One credit card customer transactions.</p> <p>5 It captures things like date, merchant, transaction</p> <p>6 amount.</p> <p>7 Q. And what about the authorization table, if</p> <p>8 that's a separate table?</p> <p>9 A. It's a separate table. Authorizations</p> <p>10 typically turn into transactions. An authorization is</p> <p>11 if you're at a merchant and you swipe your card through</p> <p>12 one of those electronic machines, it holds the funds</p> <p>13 until the transaction is settled between the bank and</p> <p>14 the merchant within a couple days typically.</p> <p>15 Q. And you said that they were accessing these</p> <p>16 tables in a frequency and scope that was inconsistent</p> <p>17 with how they should have been using it for their job</p> <p>18 functions; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. And you mentioned that they were frequently</p> <p>21 accessing these, more frequently than other employees in</p> <p>22 their area; is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. Other than that, what else do you know about</p> <p>25 what they were purportedly misusing their information?</p>	<p style="text-align: right;">52</p> <p>1 A. Yes.</p> <p>2 Q. Specifically tables that other people did not</p> <p>3 access as frequently as they did, right?</p> <p>4 A. Yes.</p> <p>5 Q. What else led to the conclusion that they were</p> <p>6 misusing the information?</p> <p>7 A. If we focus on Nan for a second, his job</p> <p>8 duties really should have nothing to do with merchant</p> <p>9 transaction data at all and he was pulling it</p> <p>10 frequently.</p> <p>11 If you look at Bonan, his job duties are to</p> <p>12 support call centers and do what I would say are one off</p> <p>13 analysis of improper transactions, and so when he is</p> <p>14 hitting a transaction table 12,000 times, that is very</p> <p>15 inconsistent with the expectations of his job.</p> <p>16 Q. Go ahead, I don't want cut you off.</p> <p>17 A. In addition, also I reviewed those queries</p> <p>18 with his managers. They also stated that they see no</p> <p>19 reason for these queries to be run.</p> <p>20 Q. And was that the reason they were fired?</p> <p>21 A. They were terminated for using confidential</p> <p>22 proprietary information for nonbusiness purposes.</p> <p>23 Q. And my question is: I have understood we've</p> <p>24 talked about the trades, but is there any other</p> <p>25 nonbusiness purpose that you're aware of that they used</p>

<p style="text-align: right;">53</p> <p>1 the information?</p> <p>2 A. The only thing I can say is they were using</p> <p>3 their time at Capital One in an improper way and using</p> <p>4 the data improperly.</p> <p>5 Q. Okay.</p> <p>6 A. Which -- that's it.</p> <p>7 Q. Did you ever explain to them why they were</p> <p>8 being fired? Let's start with you first.</p> <p>9 MR. PETERSON: Objection, form.</p> <p>10 Q. Go ahead, you can answer.</p> <p>11 A. Yes.</p> <p>12 Q. Was that in a face-to-face meeting?</p> <p>13 A. Yes.</p> <p>14 Q. And who else was in that meeting?</p> <p>15 MR. PETERSON: Objection, form.</p> <p>16 Q. You can answer.</p> <p>17 A. An HR representative.</p> <p>18 Q. So it was you and an HR representative and,</p> <p>19 let's start with Bonan, Bonan?</p> <p>20 A. And Bonan.</p> <p>21 Q. And when was that?</p> <p>22 A. I don't know the exact date off the top of my</p> <p>23 head, just early 2015.</p> <p>24 Q. And what did you say to Bonan in that meeting?</p> <p>25 A. That he has breached our code of conduct</p>	<p style="text-align: right;">55</p> <p>1 that they were accessing these tables more frequently</p> <p>2 than the typical employee and for reasons that Capital</p> <p>3 One concluded were nonbusiness purposes. How did</p> <p>4 Capital One find that activity?</p> <p>5 A. We keep a log in the Teradata database</p> <p>6 management system of all queries run off that system for</p> <p>7 the past thirteen months. We pulled that log.</p> <p>8 Q. Why did Capital One pull that log?</p> <p>9 A. We pulled that log because there was an</p> <p>10 assumption that they were misusing the data at Capital</p> <p>11 One.</p> <p>12 Q. What was the basis of that assumption?</p> <p>13 A. The basis of the assumption that we had was</p> <p>14 the information that I had received, again, from</p> <p>15 conversations with legal and upper management about a</p> <p>16 potential issue, which was discussed with me at the end</p> <p>17 of 2014.</p> <p>18 Q. When you went to look at the log, were you</p> <p>19 aware of whether Capital One was in discussions with the</p> <p>20 SEC?</p> <p>21 MR. PETERSON: Objection, vague.</p> <p>22 BY MR. SOMENSATTO:</p> <p>23 Q. You said you knew that Capital One has</p> <p>24 provided some information to the SEC; is that correct?</p> <p>25 A. I did at some point.</p>
<p style="text-align: right;">54</p> <p>1 policies and is being terminated for that.</p> <p>2 Q. Is that it? Anything else?</p> <p>3 A. That was the direct -- pretty direct line that</p> <p>4 I gave him.</p> <p>5 Q. Okay. Did he have a chance to respond?</p> <p>6 A. He asked a couple of follow-up questions. My</p> <p>7 response was very much the same, he has breached our</p> <p>8 code of conduct policies.</p> <p>9 Q. Do you remember any of the questions he asked?</p> <p>10 A. I believe it was why.</p> <p>11 Q. Did you do the same thing for Nan? Was it</p> <p>12 also you, an HR person and Nan?</p> <p>13 A. Correct.</p> <p>14 Q. Was the termination on the same day?</p> <p>15 A. It was.</p> <p>16 Q. And did you provide the same explanation to</p> <p>17 Nan?</p> <p>18 A. I did.</p> <p>19 Q. How about him, did he say anything or did he</p> <p>20 have a chance to respond?</p> <p>21 A. He also asked a question or two as well.</p> <p>22 Q. And do you remember what those questions were?</p> <p>23 A. It was along a similar line of why am I being</p> <p>24 terminated.</p> <p>25 Q. At any point before -- well, you mentioned</p>	<p style="text-align: right;">56</p> <p>1 Q. Right.</p> <p>2 A. I don't believe I did at the end of 2014.</p> <p>3 Q. That was my question.</p> <p>4 I don't want you to go into what you talked</p> <p>5 about with counsel, but do you know at all why someone</p> <p>6 originally looked at Nan and Bonan's activity on the</p> <p>7 database?</p> <p>8 MR. PETERSON: Objection, vague.</p> <p>9 A. So I don't have the specific reason we started</p> <p>10 because I got the information from legal.</p> <p>11 Q. Right.</p> <p>12 A. It was very confidential when it was initially</p> <p>13 told to me, so had limited information at that point.</p> <p>14 Since then I do know that the SEC is aware of suspicious</p> <p>15 transactions.</p> <p>16 Q. That knowledge, do you know if this SEC was</p> <p>17 aware of suspicious transactions before you went and</p> <p>18 looked at the log? For example, did a request of</p> <p>19 Capital One from the SEC cause you to go look at the</p> <p>20 log?</p> <p>21 MR. PETERSON: Objection, form.</p> <p>22 A. Not me directly.</p> <p>23 Q. Right, I understand not you directly. But you</p> <p>24 were the one who looked at the log or had somebody look</p> <p>25 at the log?</p>

<p style="text-align: right;">57</p> <p>1 MR. PETERSON: Objection to form.</p> <p>2 Q. Is that correct?</p> <p>3 A. There were several of us that were looking at</p> <p>4 the logs.</p> <p>5 Q. And you were requested to do that through</p> <p>6 legal counsel?</p> <p>7 MR. PETERSON: Objection. This is getting</p> <p>8 into attorney/client. If you want to ask him what he</p> <p>9 looked at it, I think that's appropriate. If you want</p> <p>10 to ask him when he looked at it, I think that's</p> <p>11 appropriate.</p> <p>12 Q. I'm just trying to figure out how it was that</p> <p>13 somebody suspected that our clients were doing something</p> <p>14 wrong. Do you know? If you don't know, that's fine.</p> <p>15 A. Came to me from legal counsel.</p> <p>16 Q. Okay. So after you looked at the log, how</p> <p>17 quickly after that was the decision made to fire Nan and</p> <p>18 Bonan?</p> <p>19 A. So the initial notice occurred at the end of</p> <p>20 2014 in, I believe, December. The logs, I believe, was</p> <p>21 January, and it was within, I'd say, a couple weeks.</p> <p>22 I'm not exactly sure of the exact time frame.</p> <p>23 Q. So in between that initial notice and when</p> <p>24 they were fired, putting aside any meetings you had with</p> <p>25 attorneys at Capital One, what did you do during that</p>	<p style="text-align: right;">59</p> <p>1 if Capital One hired outside counsel to do an internal</p> <p>2 investigation into Bonan and Nan?</p> <p>3 MR. PETERSON: Objection, form and vague.</p> <p>4 A. I don't know.</p> <p>5 Q. Have you ever met with the SEC before today?</p> <p>6 A. I have not.</p> <p>7 Q. Has anyone working for you met with the SEC</p> <p>8 before today?</p> <p>9 A. Not that I am aware of.</p> <p>10 Q. Are you aware of any Capital One witnesses,</p> <p>11 Capital One employees who gave on-the-record testimony</p> <p>12 to the SEC?</p> <p>13 A. In reference to this event?</p> <p>14 Q. Yes.</p> <p>15 A. I'm not aware of that either.</p> <p>16 Q. Did the SEC ever make any requests from you or</p> <p>17 from your group to look at information or look at the</p> <p>18 activity of Bonan and Nan with respect to this</p> <p>19 nonbusiness purpose use of the database?</p> <p>20 MR. PETERSON: Objection to the scope. This</p> <p>21 isn't covered by any of the topics.</p> <p>22 A. Can you repeat the question, please?</p> <p>23 Q. I'm just wondering if the SEC has ever made a</p> <p>24 request of you or your group to help them in this</p> <p>25 investigation?</p>
<p style="text-align: right;">58</p> <p>1 period yourself or that you directed people underneath</p> <p>2 you to do to look into their activity, to Bonan's and</p> <p>3 Nan's activity?</p> <p>4 MR. PETERSON: Objection, form.</p> <p>5 Q. You can answer.</p> <p>6 A. In that December time frame?</p> <p>7 Q. Yes.</p> <p>8 A. I did not do any further research. I did not</p> <p>9 even have the names at that point.</p> <p>10 Q. The names of?</p> <p>11 A. Bonan and Nan at that point.</p> <p>12 Q. So when you went to look at the log, were you</p> <p>13 looking at specific users of the database?</p> <p>14 A. I looked at the logs in January.</p> <p>15 Q. Okay, you looked at the logs in January, but</p> <p>16 you were notified of the potential need to look into</p> <p>17 them in December; is that correct?</p> <p>18 A. I was notified of an issue in December.</p> <p>19 Again, very confidential, no names.</p> <p>20 Q. Okay. And it wasn't -- when did you learn it</p> <p>21 was Nan and Bonan that they were looking at, that</p> <p>22 Capital One was investigating?</p> <p>23 A. After I got back from the holidays in January.</p> <p>24 Q. Do you know if -- and this might be legal</p> <p>25 terminology that you don't even know. But do you know</p>	<p style="text-align: right;">60</p> <p>1 MR. PETERSON: Same objection and also form.</p> <p>2 MR. KELLY: I object to form as well.</p> <p>3 BY MR. SOMENSATTO:</p> <p>4 Q. You can answer.</p> <p>5 A. I've had no direct questions or interactions</p> <p>6 with the SEC.</p> <p>7 Q. Did someone at Capital One ever obtain Bonan's</p> <p>8 and/or Nan's computers that they used?</p> <p>9 A. Yes.</p> <p>10 Q. When was that?</p> <p>11 A. That would have been upon termination.</p> <p>12 Q. So before termination, did anybody review what</p> <p>13 they had saved on their local computers?</p> <p>14 MR. KELLY: Object to the form of the</p> <p>15 question.</p> <p>16 MR. PETERSON: Same objection.</p> <p>17 Q. Anyone within Capital One, to your knowledge?</p> <p>18 A. I'm aware of looking at what was saved through</p> <p>19 the Teradata log -- saved is not the right word -- what</p> <p>20 was run through the Teradata logs. I'm not aware of on</p> <p>21 their personal laptops.</p> <p>22 Q. Were you or your team ever asked to gather</p> <p>23 documents with respect to an SEC investigation into this</p> <p>24 issue?</p> <p>25 MR. PETERSON: Objection to the extent there</p>

Conducted on October 14, 2015

16 (Pages 61 to 64)

<p style="text-align: right;">61</p> <p>1 is any attorney/client communications in there.</p> <p>2 Q. I don't want to know --</p> <p>3 MR. PETERSON: You can ask him if he gathered.</p> <p>4 Q. Yeah, did you gather documents that were sent</p> <p>5 to the SEC?</p> <p>6 A. I'm aware we gathered documentation, handed it</p> <p>7 to legal counsel, legal counsel handed it to the SEC.</p> <p>8 Q. Other than the one trading record that you</p> <p>9 were aware of, did you review any documents related to</p> <p>10 trading conducted by Bonan or Nan?</p> <p>11 MR. KELLY: I object to the extent it</p> <p>12 mischaracterizes his testimony.</p> <p>13 MR. PETERSON: Same objection.</p> <p>14 Q. It's my understanding that earlier you</p> <p>15 testified that you were aware of at least one e-mail</p> <p>16 confirmation regarding trading by Bonan; is that</p> <p>17 correct?</p> <p>18 A. Yes, and I'll clarify. I'm aware of one</p> <p>19 document for each one, an e-mail confirmation for one</p> <p>20 and a Scott Trade statement for the other, but I'm not</p> <p>21 sure who had what.</p> <p>22 Q. Were you aware of that before they were</p> <p>23 terminated, of those documents?</p> <p>24 A. I was not aware of those documents before they</p> <p>25 were terminated.</p>	<p style="text-align: right;">63</p> <p>1 been November 2013 onwards.</p> <p>2 Q. And what was done after that was flagged?</p> <p>3 A. Bonan was notified by someone within the</p> <p>4 information technology area about his query using too</p> <p>5 much Teradata capacity in which you're asked to stop</p> <p>6 that query. He did not stop it.</p> <p>7 Q. Was there any follow-up to his not stopping?</p> <p>8 A. He explained to the IT person why he was going</p> <p>9 to continue running it. I'm not aware of any follow-up</p> <p>10 after that.</p> <p>11 Q. What was his explanation?</p> <p>12 A. He was running -- he said he was working on a</p> <p>13 project or a query that was for a regulatory need.</p> <p>14 Q. Do you have any idea what that regulatory need</p> <p>15 was that he at least claimed that it was for?</p> <p>16 A. I believe it was one of the stress tests that</p> <p>17 banks are put under.</p> <p>18 Q. Has how Capital One monitors this database</p> <p>19 changed since Bonan and Nan were fired, if you know?</p> <p>20 A. The monitoring is the same.</p> <p>21 MR. PETERSON: Object to that last question,</p> <p>22 beyond the scope of the deposition topics.</p> <p>23 Q. What is Capital One's market share in the U.S.</p> <p>24 credit card industry?</p> <p>25 A. Capital One does not know its market share in</p>
<p style="text-align: right;">62</p> <p>1 Q. And my question was: Did you review any other</p> <p>2 documents regarding their trading activities?</p> <p>3 A. The only other thing I have ever reviewed that</p> <p>4 mentions trading is a spreadsheet with a log of</p> <p>5 potential trades for specific merchants.</p> <p>6 Q. When did you review that?</p> <p>7 A. It was either within a couple days of</p> <p>8 termination or a couple days after. I can't recall</p> <p>9 whether it was before or after.</p> <p>10 Q. We discussed earlier -- I don't want to</p> <p>11 characterize your testimony in any way. We talked a</p> <p>12 little bit about monitoring of the database. Did any of</p> <p>13 the monitoring of the Teradata database before the date</p> <p>14 that your group went in and looked at the logs ever</p> <p>15 identify any suspicious activity by Bonan or Nan?</p> <p>16 A. I'm aware of a transaction, a query that Bonan</p> <p>17 was running that did catch the attention of the people</p> <p>18 monitoring the systems.</p> <p>19 Q. When was that? When did it catch their</p> <p>20 attention?</p> <p>21 A. Are you talking about date?</p> <p>22 Q. Just generally. Was it a year or two before</p> <p>23 they were terminated? Was it a month or two?</p> <p>24 A. I actually don't know the date. I know it was</p> <p>25 within the time frame that we analyzed, which would have</p>	<p style="text-align: right;">64</p> <p>1 the industry.</p> <p>2 Q. Does Capital One know whether it's the largest</p> <p>3 issuer of credit cards in the U.S. or where it ranks</p> <p>4 relative to other credit card companies?</p> <p>5 MR. PETERSON: Objection, form. Vague</p> <p>6 question.</p> <p>7 Q. You can answer.</p> <p>8 A. I don't have a very specific answer. I can</p> <p>9 tell you it's in the top ten largest issuers.</p> <p>10 Q. Do you know if anybody at Capital One tracks</p> <p>11 Capital One's market share within the credit card</p> <p>12 industry?</p> <p>13 MR. PETERSON: Objection. He has already</p> <p>14 testified Capital One doesn't know its market share in</p> <p>15 the industry.</p> <p>16 Q. So my question was: Does anybody try to know</p> <p>17 or is it just something that they don't look into?</p> <p>18 A. I'm not aware of anybody trying to know.</p> <p>19 You'd have to know the market share of all the other</p> <p>20 competitors.</p> <p>21 Q. Do you know how many transactions in total</p> <p>22 dollars that Capital One card holders spend with Capital</p> <p>23 One credit cards in a given year?</p> <p>24 MR. PETERSON: Objection. That's not a</p> <p>25 deposition topic. Deposition topic was market share,</p>

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0823

Conducted on October 14, 2015

17 (Pages 65 to 68)

<p style="text-align: right;">65</p> <p>1 but the entire running of the credit card organization</p> <p>2 was not a topic.</p> <p>3 MR. SOMENSATTO: I guess the only way you can</p> <p>4 know your market share is if you know your total market,</p> <p>5 right?</p> <p>6 MR. PETERSON: That makes sense, but he</p> <p>7 testified they don't know it.</p> <p>8 Q. Do you know? If you are not certain of the</p> <p>9 answer, that's fine, but do you know?</p> <p>10 A. I don't.</p> <p>11 Q. I think you mentioned this before but let's</p> <p>12 just make it clear for the record. Do you know what</p> <p>13 Capital One's market share was with respect to each of</p> <p>14 the individual companies listed in Attachment A?</p> <p>15 A. I do not know.</p> <p>16 Q. Which companies or third party entities other</p> <p>17 than Capital One have access to the One View or Teradata</p> <p>18 database?</p> <p>19 MR. PETERSON: Objection, form.</p> <p>20 MR. KELLY: Same.</p> <p>21 BY MR. SOMENSATTO:</p> <p>22 Q. Does any?</p> <p>23 A. They do not.</p> <p>24 Q. For example, you mentioned that Teradata sets</p> <p>25 up the database, right?</p>	<p style="text-align: right;">67</p> <p>1 access to the database?</p> <p>2 MR. PETERSON: Objection. That's asked and</p> <p>3 answered.</p> <p>4 A. They do not have access directly to Teradata.</p> <p>5 Q. The information that Bonan and Nan accessed</p> <p>6 from Teradata, how was that information produced to the</p> <p>7 SEC?</p> <p>8 MR. PETERSON: Objection to form.</p> <p>9 THE WITNESS: Documents were gathered based on</p> <p>10 their transactions in the transaction logs. We handed</p> <p>11 them to legal counsel.</p> <p>12 Q. Help me understand the transaction log again.</p> <p>13 A. Okay.</p> <p>14 Q. So I understand we have a database here,</p> <p>15 right? Is there like a specific program that somebody</p> <p>16 is sitting at a computer uses to interact with the</p> <p>17 database? Like is there some platform like that they</p> <p>18 are looking at?</p> <p>19 A. Sorry, can you repeat? Repeat the question,</p> <p>20 please.</p> <p>21 Q. Listen, I'm coming from a very lay background</p> <p>22 here, right, so I'm imagining, right, when I use my</p> <p>23 Gmail, that there is a database of my information off</p> <p>24 somewhere over here.</p> <p>25 A. Okay.</p>
<p style="text-align: right;">66</p> <p>1 A. Correct.</p> <p>2 Q. I presume they then don't have access to use</p> <p>3 the database in any way; is that correct?</p> <p>4 A. Not that I am aware of.</p> <p>5 Q. Are there any third party service providers</p> <p>6 that analyze the information on the database?</p> <p>7 MR. PETERSON: Objection, vague.</p> <p>8 A. I'm not aware of any third parties analyzing</p> <p>9 data on the Teradata.</p> <p>10 Q. Do like MasterCard and Visa get access to</p> <p>11 information on the database?</p> <p>12 MR. KELLY: Objection.</p> <p>13 MR. PETERSON: Objection, asked and answered.</p> <p>14 MR. KELLY: Asked and answered, yes.</p> <p>15 Q. Go ahead.</p> <p>16 A. They don't. It's proprietary confidential</p> <p>17 information.</p> <p>18 Q. Is there any way in which Capital One shares</p> <p>19 the data on that database with third parties?</p> <p>20 MR. KELLY: Objection.</p> <p>21 MR. PETERSON: Objection. Asked and answered.</p> <p>22 MR. KELLY: Same objection.</p> <p>23 Q. Go ahead.</p> <p>24 A. They do not.</p> <p>25 Q. Do you know if Capital One has given the SEC</p>	<p style="text-align: right;">68</p> <p>1 Q. And I'm looking at a Gmail screen. This is</p> <p>2 how I access it. I search for something, it pops up and</p> <p>3 this is how I'm seeing the world. And I'm wondering,</p> <p>4 Bonan and Nan, how do they see the database? Is it some</p> <p>5 kind of proprietary software on their computers?</p> <p>6 A. Yeah. You can see the data in the database</p> <p>7 through different platforms. For example, Teradata has</p> <p>8 a GUI graphical user interface front end called Teradata</p> <p>9 SQL Assistant where they can literally select data from</p> <p>10 different tables and see it. That's one method.</p> <p>11 There's all sorts of methods. I don't know if</p> <p>12 you need them.</p> <p>13 Q. And so when you ran the log or had somebody</p> <p>14 run the log on Bonan and Nan's transactions, kind of</p> <p>15 walk me through practically what does that mean? Do you</p> <p>16 guys run a search in this interface that produces some</p> <p>17 result?</p> <p>18 A. Yep. So the log is just another table in the</p> <p>19 Teradata database management system that captures every</p> <p>20 SQL query that is run against the Teradata system.</p> <p>21 Q. And does -- go ahead, sorry, I don't want to</p> <p>22 cut you off.</p> <p>23 A. Basically we write another query to extract</p> <p>24 queries run by Bonan and Nan.</p> <p>25 Q. And the queries, are they like created out of</p>

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0824

Conducted on October 14, 2015

18 (Pages 69 to 72)

<p style="text-align: right;">69</p> <p>1 like computer code? Is that how it works?</p> <p>2 A. Yes, it looks like a computer code.</p> <p>3 Q. And then when you run that query, you get a</p> <p>4 log of all the queries that an individual user like</p> <p>5 Bonan entered into the system over a certain time</p> <p>6 period; is that correct?</p> <p>7 MR. PETERSON: Objection, vague. Depends on</p> <p>8 what the query is.</p> <p>9 Q. Well, what query did you run?</p> <p>10 A. We ran a query specifically looking for</p> <p>11 queries that searched for merchant for a specific time</p> <p>12 period, November 2013 going forward.</p> <p>13 Q. Okay. And so then you received a log of all</p> <p>14 the queries from Bonan user of looking at retail either</p> <p>15 transaction data or authorization data; is that correct?</p> <p>16 A. We actually searched on a field called -- with</p> <p>17 the name Merchant in it. It could have pulled from a</p> <p>18 query that hit the transaction or authorization table.</p> <p>19 It also could have pulled any tables they themselves</p> <p>20 created.</p> <p>21 Q. And the result of that query that you did was</p> <p>22 a log of all their queries; is that correct?</p> <p>23 A. It's a log of all their queries that had a --</p> <p>24 that leveraged a merchant field name.</p> <p>25 Q. And I think you quoted the number that you</p>	<p style="text-align: right;">71</p> <p>1 question.</p> <p>2 MR. PETERSON: Same objection.</p> <p>3 Q. You can answer.</p> <p>4 A. I would expect the log to focus more on</p> <p>5 customer transactions and not on submitting data by</p> <p>6 merchants. If there was any merchant investigation, I</p> <p>7 would have expected it to be one off rather than routine</p> <p>8 summations by a large number of merchants, ten to</p> <p>9 fifteen at a time.</p> <p>10 Q. Again, I'm learning through this, but you are</p> <p>11 seeing in this log the queries that they made to the</p> <p>12 system, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Presumably those queries, if entered</p> <p>15 independently, would pull some other information, right,</p> <p>16 whatever they were requesting; is that correct?</p> <p>17 A. Can you repeat that again?</p> <p>18 Q. Yeah. So you are just -- the log that you're</p> <p>19 seeing is just the queries that they entered?</p> <p>20 A. Correct.</p> <p>21 Q. Not the results of their queries?</p> <p>22 A. Correct.</p> <p>23 Q. And at any point in time did Capital One run</p> <p>24 their individual queries to see what the results were?</p> <p>25 MR. KELLY: Object to the form of the</p>
<p style="text-align: right;">70</p> <p>1 found for Bonan. Do you remember what the number was?</p> <p>2 A. It's about 12,000.</p> <p>3 Q. Over what time period?</p> <p>4 A. It was the year 2014.</p> <p>5 Q. Okay. And was there any effort, then, to try</p> <p>6 to determine which of those queries were business</p> <p>7 related and which ones were not business related?</p> <p>8 MR. PETERSON: Objection, vague, "any effort."</p> <p>9 BY MR. SOMENSATTO:</p> <p>10 Q. Yes, just wondering. Go ahead, you can</p> <p>11 answer.</p> <p>12 A. Yes, so the intent of the queries, again,</p> <p>13 based on his job role, he should have been doing one off</p> <p>14 queries to investigate merchants. In this case, he was</p> <p>15 summing up transactions by a large host of merchants</p> <p>16 which did not align with his job duties.</p> <p>17 Q. So it wasn't just the number of queries, it</p> <p>18 was also kind of the nature of what he was looking for,</p> <p>19 to stick with Bonan for now, that raised a concern?</p> <p>20 A. That is correct.</p> <p>21 Q. Only answer this if you can. What did you</p> <p>22 expect, like if you were looking at assuming he had only</p> <p>23 done his job responsibilities as you expected them to</p> <p>24 be, what did you expect the log to look like?</p> <p>25 MR. KELLY: Object to the form of the</p>	<p style="text-align: right;">72</p> <p>1 question.</p> <p>2 A. I did not particularly run his queries to see</p> <p>3 what the results were.</p> <p>4 Q. And just from a practical perspective, how</p> <p>5 would those queries have come back? Like I assume</p> <p>6 there's some output from the database, right?</p> <p>7 A. (Nodding in the affirmative.)</p> <p>8 Q. Is that immediately in a spreadsheet form, or</p> <p>9 can you determine where that information goes and how</p> <p>10 you look at it?</p> <p>11 MR. PETERSON: Objection, form.</p> <p>12 MR. KELLY: Same objection.</p> <p>13 A. There are a variety of ways for the data to</p> <p>14 come back. If you go back to the Teradata SQL Assistant</p> <p>15 GUI, you could select it. You could actually set the</p> <p>16 system up to automatically e-mail the results to you.</p> <p>17 You could look at it directly pulling the data into a</p> <p>18 spreadsheet from multiple sources.</p> <p>19 Q. Just because I understand this one, let's say</p> <p>20 you picked e-mail to you, what would you see in the</p> <p>21 e-mail?</p> <p>22 A. Entirely depends on how they set it up. They</p> <p>23 could send themselves a spreadsheet through an automated</p> <p>24 fashion. If they spent a lot of time coding, they could</p> <p>25 actually have the results show in like a tabular form on</p>

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0825

<p style="text-align: right;">73</p> <p>1 the e-mail itself.</p> <p>2 Q. We have that foundation. What did they</p> <p>3 actually do, if you know? How did they have the</p> <p>4 information sent to them from the database?</p> <p>5 MR. KELLY: Object to the form of the</p> <p>6 question.</p> <p>7 MR. PETERSON: Object to form.</p> <p>8 THE WITNESS: I actually don't know exactly</p> <p>9 how they sent it to themselves.</p> <p>10 MR. SOMENSATTO: Mind if I take a two-minute</p> <p>11 break, talk to Gene, see how long we have?</p> <p>12 MR. PETERSON: That is fine with us.</p> <p>13 (Short recess taken.)</p> <p>14 BY MR. SOMENSATTO:</p> <p>15 Q. You mentioned while we were discussing market</p> <p>16 share that your understanding that Capital One is within</p> <p>17 potentially the top ten of all credit card issuers in</p> <p>18 the U.S. Do you recall that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know where it ranks on that list of top</p> <p>21 ten?</p> <p>22 MR. KELLY: Objection to form.</p> <p>23 MR. PETERSON: Objection to form.</p> <p>24 Q. Go ahead.</p> <p>25 MR. KELLY: Can you specify a year?</p>	<p style="text-align: right;">75</p> <p>1 December 1st and the last two weeks of the year, because</p> <p>2 the last two weeks I was off.</p> <p>3 Q. So you were off the last two weeks, and then</p> <p>4 do you know when they were terminated?</p> <p>5 A. I don't know the exact date.</p> <p>6 Q. At any time between when you learned about</p> <p>7 potential concerns with their activity and the date that</p> <p>8 they were terminated, did you or anyone at Capital One</p> <p>9 explain to Nan or Bonan that what they did was</p> <p>10 potentially illegal?</p> <p>11 MR. PETERSON: Objection to form there.</p> <p>12 A. We did not.</p> <p>13 Q. Did you ever inform them that the SEC was</p> <p>14 aware of their activities?</p> <p>15 MR. PETERSON: Objection to form.</p> <p>16 THE WITNESS: We did not.</p> <p>17 MR. KELLY: Same objection.</p> <p>18 BY MR. SOMENSATTO:</p> <p>19 Q. Did you ever inform Bonan or Nan before they</p> <p>20 were terminated or even after they were terminated that</p> <p>21 any government agency had been notified about their</p> <p>22 activity?</p> <p>23 MR. PETERSON: Objection to form.</p> <p>24 A. We did not.</p> <p>25</p>
<p style="text-align: right;">74</p> <p>1 MR. SOMENSATTO: True.</p> <p>2 Q. What year do you know that Capital One was one</p> <p>3 of the top ten issuers of credit cards?</p> <p>4 MR. PETERSON: Objection to form.</p> <p>5 BY MR. SOMENSATTO:</p> <p>6 Q. You can answer.</p> <p>7 A. I actually don't know the exact placement,</p> <p>8 so...</p> <p>9 Q. And do you know which year, though, that</p> <p>10 information relates to?</p> <p>11 MR. PETERSON: Objection to form.</p> <p>12 A. I can say for the last several years we've</p> <p>13 been in the top ten.</p> <p>14 Q. Do you know if it was No. 1?</p> <p>15 A. I don't.</p> <p>16 Q. Do you know if it was No. 2?</p> <p>17 A. I don't.</p> <p>18 Q. You mentioned, you testified earlier that you</p> <p>19 first learned about concerns with activities by Bonan</p> <p>20 and Nan in December 2014, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Can you give me a more precise date? You had</p> <p>23 mentioned a holiday. Do you know when in December you</p> <p>24 learned?</p> <p>25 A. I can only say it would have been between</p>	<p style="text-align: right;">76</p> <p>1 Q. Did Capital One ever inform or represent to</p> <p>2 Bonan or Nan that Capital One may press charges against</p> <p>3 them?</p> <p>4 A. Repeat the question.</p> <p>5 Q. Did anyone at Capital One ever inform Bonan or</p> <p>6 Nan that Capital One was considering pressing charges</p> <p>7 against them?</p> <p>8 MR. PETERSON: Objection to form. There is no</p> <p>9 basis for that.</p> <p>10 A. We did not.</p> <p>11 Q. So am I accurate to say that the only</p> <p>12 explanation given to Bonan or Nan about their</p> <p>13 termination was what we discussed was said in the</p> <p>14 meeting earlier?</p> <p>15 MR. KELLY: Objection, form.</p> <p>16 A. It was a breach of code of conduct.</p> <p>17 Q. Was that ever written down in any</p> <p>18 correspondence to them?</p> <p>19 MR. PETERSON: Objection to form.</p> <p>20 A. No, it was not.</p> <p>21 Q. The message was only verbal from you to them?</p> <p>22 A. Correct.</p> <p>23 Q. Did Capital One engage any third parties in</p> <p>24 assisting in it's fraud detection efforts?</p> <p>25 MR. KELLY: Objection to form.</p>

Conducted on October 14, 2015

20 (Pages 77 to 80)

<p style="text-align: right;">77</p> <p>1 MR. PETERSON: And objection to scope.</p> <p>2 Q. Go ahead, you can answer.</p> <p>3 MR. PETERSON: I am going to instruct him not</p> <p>4 to answer. That's well outside the deposition topics.</p> <p>5 MR. SOMENSATTO: I think I'm setting a</p> <p>6 foundation. I want to ask him whether that third party</p> <p>7 entity gets any information from the database which is</p> <p>8 we are asking about third parties.</p> <p>9 MR. PETERSON: He already testified no third</p> <p>10 parties have access to the database.</p> <p>11 MR. SOMENSATTO: I understand that, and I'm</p> <p>12 just trying to make sure I've covered all my bases, all</p> <p>13 I'm doing.</p> <p>14 MR. PETERSON: Fair enough, but I think that</p> <p>15 last question was out the scope. If you want to come at</p> <p>16 it a different way. We could have prepared someone to</p> <p>17 talk about all the things Capital One does, but he is</p> <p>18 not here to talk about that.</p> <p>19 MR. SOMENSATTO: I understand what you're</p> <p>20 saying, but I asked if any of the data or access to the</p> <p>21 database was given to third parties. All I'm trying to</p> <p>22 do is ensure there is not some third that's missing. Is</p> <p>23 that problematic?</p> <p>24 MR. PETERSON: Only to the extent it's already</p> <p>25 been asked, and he told you no third parties.</p>	<p style="text-align: right;">79</p> <p>1 Q. Has Capital One determined that they violated</p> <p>2 any other policies other than the code of conduct?</p> <p>3 MR. KELLY: Objection to form.</p> <p>4 A. No further research from our end has been done</p> <p>5 other than the code of conduct breach.</p> <p>6 Q. We discussed one instance in which Bonan's</p> <p>7 activity on the database was flagged and he provided an</p> <p>8 explanation about needing to do -- needing that data for</p> <p>9 a stress test or regulatory response. Do you remember</p> <p>10 that?</p> <p>11 A. Yes.</p> <p>12 Q. At any point during their employment at</p> <p>13 Capital One, did Bonan and/or Nan give any other</p> <p>14 explanation for these queries that Capital One</p> <p>15 discovered that they determined were for nonbusiness</p> <p>16 purposes?</p> <p>17 MR. PETERSON: Objection to form.</p> <p>18 THE WITNESS: Not that I'm aware of.</p> <p>19 BY MR. SOMENSATTO:</p> <p>20 Q. Have you been asked -- do you know when the</p> <p>21 trial date is in this case?</p> <p>22 A. I do not.</p> <p>23 Q. It's December 11th and then leading into the</p> <p>24 next week, I think. Have you been asked by the SEC to</p> <p>25 testify at that trial?</p>
<p style="text-align: right;">78</p> <p>1 Q. So if Capital One were to testify at trial, it</p> <p>2 would consistently say no one gets access to the</p> <p>3 database other than Capital One employees; is that</p> <p>4 correct?</p> <p>5 MR. PETERSON: Objection, asked and answered.</p> <p>6 You can answer.</p> <p>7 A. Nobody has access to the data within the</p> <p>8 Teradata. Sorry, no third parties.</p> <p>9 Q. You referenced the code of conduct in your</p> <p>10 discussion with Bonan and Nan. Is that the only policy</p> <p>11 -- well, I guess is the code of conduct at Capital One a</p> <p>12 separate policy?</p> <p>13 MR. PETERSON: Objection, form. Separate from</p> <p>14 what?</p> <p>15 Q. Separate from other policies, an insider</p> <p>16 trading policy, or is the insider trading policy and</p> <p>17 document retention policy, is all of that maintained</p> <p>18 under the code of conduct?</p> <p>19 MR. PETERSON: Objection to form.</p> <p>20 A. Best I can give is code of conduct has its own</p> <p>21 training material versus some other policies.</p> <p>22 Q. And Bonan and Nan were never informed that</p> <p>23 they violated any other policies when they were</p> <p>24 terminated, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">80</p> <p>1 A. The trial date for this particular case?</p> <p>2 Q. Yes.</p> <p>3 A. I have not.</p> <p>4 Q. Do you know if anybody at Capital One has been</p> <p>5 told that date for trial?</p> <p>6 A. I'm not aware. I'm not aware.</p> <p>7 Q. Has Capital One identified any other potential</p> <p>8 witnesses who may testify at trial, to your knowledge?</p> <p>9 A. No. I'm aware of a potential that I may have</p> <p>10 to testify in the future. It may be this particular</p> <p>11 case.</p> <p>12 Q. And do you know if anybody else at Capital One</p> <p>13 has been made aware that they may need to testify at</p> <p>14 trial?</p> <p>15 A. I'm not aware of anybody else.</p> <p>16 Q. As I understand it, Teradata maintains all</p> <p>17 data regarding every transaction made by Capital One</p> <p>18 cardholders. Is that accurate?</p> <p>19 A. Teradata houses credit card transaction, all</p> <p>20 credit card transaction data plus a lot of other data as</p> <p>21 well in addition to that.</p> <p>22 Q. I don't want to get too deep into it, but can</p> <p>23 you give me generally what other data we're talking</p> <p>24 about?</p> <p>25 A. It would also house the bank data, the other</p>

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0827

Conducted on October 14, 2015

21 (Pages 81 to 84)

<p style="text-align: right;">81</p> <p>1 bank areas data as well.</p> <p>2 Q. So if I were to go to the gas station right</p> <p>3 now and use my Capital One credit card, would that</p> <p>4 immediately be reflected inside of Teradata?</p> <p>5 MR. PETERSON: Objection, vague.</p> <p>6 Q. Go ahead.</p> <p>7 A. Timing might be slightly different than</p> <p>8 immediate, but it would be there at least by the next</p> <p>9 morning.</p> <p>10 Q. And if you can answer this, this might not</p> <p>11 even be answerable. But from what source does that</p> <p>12 information come? Does it come directly from the vendor</p> <p>13 into the database or is it stored somewhere else before</p> <p>14 it goes into Teradata?</p> <p>15 MR. PETERSON: Objection, form, vague.</p> <p>16 MR. KELLY: Same objection.</p> <p>17 A. Data lands somewhere else before it lands</p> <p>18 directly in Teradata. Basically comes through</p> <p>19 production systems, and so that's why it may be there</p> <p>20 the next morning rather than immediate.</p> <p>21 Q. Is production system some separate database?</p> <p>22 A. Teradata houses massive amounts of data. A</p> <p>23 lot of times production systems only house short periods</p> <p>24 of data, so it lands in this area for short periods of</p> <p>25 data before it lands in the longer term storage of</p>	<p style="text-align: right;">83</p> <p>1 answer there?</p> <p>2 A. Yes, it would be hard for me to assess given</p> <p>3 the 2,000 and 3,000 associates that can use the</p> <p>4 database.</p> <p>5 BY MR. SOMENSATTO:</p> <p>6 Q. Well, are you aware of any use of the data for</p> <p>7 aggregating transaction data for any purpose? For</p> <p>8 example, I'll try to contextualize it. Is there any</p> <p>9 reason that Capital One gathers all transactions at</p> <p>10 Wal-Mart for a specific purpose?</p> <p>11 A. Somebody were doing analysis around Wal-Mart</p> <p>12 because maybe they expected some sort of fraud, they may</p> <p>13 look at Wal-Mart. There is also a difference of between</p> <p>14 what I saw as instead of one off, I saw a scope of large</p> <p>15 numbers of merchants being summated.</p> <p>16 Q. So has it occurred, for example, that somebody</p> <p>17 has aggregated all the data about a company like</p> <p>18 Wal-Mart to determine whether there's potential higher</p> <p>19 rate of fraud of those entities? Do you know?</p> <p>20 A. I haven't particularly seen something that</p> <p>21 shows me that, but it would be hard to think that a</p> <p>22 particular merchant hasn't been analyzed at some point.</p> <p>23 Q. And when that information, when that query is</p> <p>24 run and that report is made in whatever format, does</p> <p>25 that then go to some operator database where it's</p>
<p style="text-align: right;">82</p> <p>1 Teradata.</p> <p>2 Q. And then the data that's on Teradata -- and</p> <p>3 let's limit ourselves to the transaction data, maybe</p> <p>4 even specifically the transaction table that we were</p> <p>5 discussing -- is that information -- strike that.</p> <p>6 We've discussed that you would have expected</p> <p>7 Bonan to run searches of that data with respect</p> <p>8 potentially to individual card users, is that accurate,</p> <p>9 if you were looking at his normal business activity?</p> <p>10 A. Can you repeat it one more time, please?</p> <p>11 Q. Part of the determination of Capital One that</p> <p>12 they were misusing this data was that they were using it</p> <p>13 in a scope that you wouldn't expect of their job</p> <p>14 functions?</p> <p>15 A. Correct.</p> <p>16 Q. And when I asked you what you would expect</p> <p>17 them to use it for, you mentioned looking potentially at</p> <p>18 individual users transactions, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Is Teradata used to aggregate like data on all</p> <p>21 of these transactions for any purpose at Capital One?</p> <p>22 MR. PETERSON: Objection, vague.</p> <p>23 A. That would be hard for me to assess whether --</p> <p>24 Q. Well, does the data --</p> <p>25 MR. PETERSON: Wait. Are you done with your</p>	<p style="text-align: right;">84</p> <p>1 stored?</p> <p>2 MR. PETERSON: Objection, vague.</p> <p>3 BY MR. SOMENSATTO:</p> <p>4 Q. Sorry, I know it's a little confusing but if</p> <p>5 you understand.</p> <p>6 MR. KELLY: Objection to form.</p> <p>7 Q. Go ahead.</p> <p>8 A. So if somebody is analyzing, like you said,</p> <p>9 Wal-Mart, does it then go to another database?</p> <p>10 Q. Yes.</p> <p>11 A. Typically somebody would still manipulate that</p> <p>12 data within Teradata. Analysts that have access to</p> <p>13 Teradata all have what's called a user space, which is</p> <p>14 an area for them to work with data, manipulate it. And</p> <p>15 so typically that's where they would store large sets of</p> <p>16 data.</p> <p>17 You can also pull it somewhere else into other</p> <p>18 databases. If you have an SAS database, you can</p> <p>19 technically pull it into SAS.</p> <p>20 Q. Are you aware of any instances where data is</p> <p>21 aggregated, for example, in a company like Wal-Mart to</p> <p>22 look at the rate of fraud and provide it to some third</p> <p>23 party in an aggregated version?</p> <p>24 A. We do not provide that data to third parties,</p> <p>25 so no.</p>

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0828

Conducted on October 14, 2015

22 (Pages 85 to 88)

<p style="text-align: right;">85</p> <p>1 MR. SOMENSATTO: I don't think I have anything</p> <p>2 else.</p> <p>3 MR. PETERSON: You want to take a quick break</p> <p>4 and look at notes?</p> <p>5 MR. INGOGLIA: Yeah, can we take a quick</p> <p>6 break?</p> <p>7 MR. PETERSON: Yes.</p> <p>8 (Short recess taken.)</p> <p>9 BY MR. SOMENSATTO:</p> <p>10 Q. You mentioned Nan potentially getting an</p> <p>11 inconsistent performance rating. Can you just let me</p> <p>12 know what you know about the factors that went into that</p> <p>13 analysis?</p> <p>14 MR. KELLY: I'm going to object to the extent</p> <p>15 it says "potential."</p> <p>16 Q. Did he have any inconsistent rating?</p> <p>17 A. The formal rating had not been finalized.</p> <p>18 Q. And what was the basis for his potential or</p> <p>19 non-final inconsistent rating?</p> <p>20 A. I don't have a ton of details other than his</p> <p>21 manager had said that he was having performance issues.</p> <p>22 I even believe some of what I would say, soft skills, I</p> <p>23 don't even think he interacted with the team as well as</p> <p>24 others within the team.</p> <p>25 Q. Any specific examples of things that he did?</p>	<p style="text-align: right;">87</p> <p>1 A. I don't have a specific assessment of how much</p> <p>2 work time was dedicated to them. However, going back to</p> <p>3 the policy of using data for business purposes only,</p> <p>4 that's where he was breaching that code of conduct.</p> <p>5 Q. And I guess I'm more interested in anything</p> <p>6 that somebody may have told you that was managing Bonan</p> <p>7 or Nan about the fact that it looked like they were</p> <p>8 working a lot, but they weren't getting anything done or</p> <p>9 anything along those lines.</p> <p>10 MR. PETERSON: Wait for a question before</p> <p>11 answering.</p> <p>12 BY MR. SOMENSATTO:</p> <p>13 Q. Did anybody say anything like that to you?</p> <p>14 MR. KELLY: Objection, form.</p> <p>15 MR. PETERSON: Objection to form.</p> <p>16 A. No, other than Nan's performance was</p> <p>17 demonstrating a bit of that.</p> <p>18 Q. The transaction data in the Teradata database,</p> <p>19 is that stored in any other database at Capital One?</p> <p>20 MR. KELLY: Object to the form of the</p> <p>21 question. Are you talking about in an official capacity</p> <p>22 or in any file in Capital One systems including</p> <p>23 defendants performance files?</p> <p>24 MR. PETERSON: I will object to form as far as</p> <p>25 the definitions of the terms database and transaction</p>
<p style="text-align: right;">86</p> <p>1 A. I don't have any specific examples.</p> <p>2 Q. How did Nan's manager describe him? Ever call</p> <p>3 him arrogant?</p> <p>4 A. I don't recall arrogant. Very similar to what</p> <p>5 I had mentioned was that he did not interact as well</p> <p>6 with the rest of the team, which was part of the reason</p> <p>7 for his poorer performance.</p> <p>8 Q. Any other description discussed with his</p> <p>9 manager that you can recall?</p> <p>10 A. No, other than just not -- it was a bit of</p> <p>11 interactions and the results he was driving, not as</p> <p>12 significant as some others on the team as well.</p> <p>13 Q. Did you ever personally review the results of</p> <p>14 his work?</p> <p>15 A. I did not personally review his results.</p> <p>16 Q. How about Bonan, how was he described by his</p> <p>17 managers?</p> <p>18 A. Bonan was described as much more easy to get</p> <p>19 along with, interacted with the team, solid performer,</p> <p>20 hard worker.</p> <p>21 Q. We discussed kind of the scope of what</p> <p>22 information they were accessing from the database. Do</p> <p>23 you have any sense of how much work time was dedicated</p> <p>24 to doing those searches?</p> <p>25 MR. PETERSON: Objection to form.</p>	<p style="text-align: right;">88</p> <p>1 data.</p> <p>2 BY MR. SOMENSATTO:</p> <p>3 Q. I'm going to let you answer.</p> <p>4 A. It's a production transaction data, is housed</p> <p>5 in Teradata. It is also housed in another database</p> <p>6 called Hadoop. That is more recent. I'm not confident</p> <p>7 it was in Hadoop at the time that they were employed.</p> <p>8 Q. Can you spell that one?</p> <p>9 A. Yeah, H-a-d-o-o-p.</p> <p>10 Q. Can you just give me an explanation of what</p> <p>11 Hadoop is and what information is saved there?</p> <p>12 A. I will try. It's another -- let's see, it's a</p> <p>13 distributed file system. Think of it as a database that</p> <p>14 houses even larger data than Teradata could ever handle.</p> <p>15 Q. Any examples? What's larger than every</p> <p>16 transaction on Capital One's cards?</p> <p>17 A. If you look at Internet web clicks, there are</p> <p>18 tons and tons of web clicks that will extend beyond</p> <p>19 transaction data.</p> <p>20 Q. All the transaction data that's in Teradata,</p> <p>21 is it also maintained in Hadoop?</p> <p>22 A. Currently, no.</p> <p>23 Q. What transaction data is maintained in Hadoop?</p> <p>24 A. I'm sorry, can you repeat your first question?</p> <p>25 Q. Yeah. All the transaction data, is it still</p>

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0829

Conducted on October 14, 2015

23 (Pages 89 to 92)

<p style="text-align: right;">89</p> <p>1 in Teradata?</p> <p>2 A. It is still in Teradata.</p> <p>3 Q. Is it also maintained in Hadoop?</p> <p>4 A. I have not personally accessed the Hadoop</p> <p>5 transaction data. I believe it is all in Hadoop as</p> <p>6 well.</p> <p>7 Q. Who has access to the Hadoop database?</p> <p>8 A. The Hadoop access users from my teams, also</p> <p>9 some of them have access to Hadoop. It is much, much</p> <p>10 more limited than Teradata at this point.</p> <p>11 Q. And for what purpose would someone access</p> <p>12 Hadoop as opposed to Teradata for transaction data?</p> <p>13 A. The purpose is a bit more on handling larger</p> <p>14 data sets and combining them. So it's a bit more of a</p> <p>15 strategic play with large data sets.</p> <p>16 Q. Do you know if any of the information on</p> <p>17 Hadoop is shared with third parties?</p> <p>18 A. It should not be as well.</p> <p>19 Q. But you don't necessarily know?</p> <p>20 A. It's confidential proprietary information</p> <p>21 again, so we don't share information with our third</p> <p>22 parties.</p> <p>23 Q. And you're not aware of any third parties that</p> <p>24 do have access to Hadoop?</p> <p>25 A. I am not.</p>	<p style="text-align: right;">91</p> <p>1 MR. INGOGLIA: That's all I have.</p> <p>2 MR. SOMENSATTO: That's all we have.</p> <p>3 MR. KELLY: We don't have anything.</p> <p>4 MR. SOMENSATTO: That's all the questions that</p> <p>5 we have for you today. Thanks so much.</p> <p>6 THE WITNESS: Thank you. Appreciate it.</p> <p>7 MR. PETERSON: Capital One request</p> <p>8 confidential treatment for this testimony.</p> <p>9</p> <p>10 (Off the record at 1:40 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">90</p> <p>1 Q. Do you know whether Bonan or Nan had access to</p> <p>2 Hadoop?</p> <p>3 A. I can't one hundred percent say, but I would</p> <p>4 think they do not or did not.</p> <p>5 MR. SOMENSATTO: Anything else?</p> <p>6 MR. INGOGLIA: One more.</p> <p>7 Would you be offended if I ask the question?</p> <p>8 MR. PETERSON: Please do.</p> <p>9 EXAMINATION BY COUNSEL FOR THE DEFENDANTS</p> <p>10 BY MR. INGOGLIA:</p> <p>11 Q. Do you recall any instance in which Bonan was</p> <p>12 asked to share information from the Teradata database</p> <p>13 with a third party?</p> <p>14 MR. PETERSON: Objection, vague.</p> <p>15 MR. INGOGLIA: In passive tense.</p> <p>16 MR. PETERSON: Passive tense by whom?</p> <p>17 MR. INGOGLIA: By anyone at Capital One.</p> <p>18 THE WITNESS: Can you repeat the question one</p> <p>19 more time?</p> <p>20 MR. INGOGLIA: Sure.</p> <p>21 BY MR. INGOGLIA:</p> <p>22 Q. Do you recall whether Bonan was ever asked by</p> <p>23 anyone at Capital One to share information from the</p> <p>24 Teradata database with a third party?</p> <p>25 A. I'm not aware of that.</p>	<p style="text-align: right;">92</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC</p> <p>2 I, Lois B. Boyle, Registered Merit Reporter</p> <p>3 and Notary Public, the officer before whom the foregoing</p> <p>4 deposition was taken, do hereby certify that the</p> <p>5 foregoing transcript is a true and correct record of the</p> <p>6 testimony given; that said testimony was taken by me</p> <p>7 stenographically and thereafter reduced to typewriting</p> <p>8 under my direction; that the reading and signing was not</p> <p>9 requested; and that I am neither counsel for, related</p> <p>10 to, nor employed by any of the parties to this case and</p> <p>11 have no interest, financial or otherwise, in its</p> <p>12 outcome.</p> <p>13 IN WITNESS WHEREOF, I have hereunto set my</p> <p>14 hand and affixed my notarial seal this 20th day of</p> <p>15 October, 2015.</p> <p>16</p> <p>17 My commission expires: July 31, 2016</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Lois B. Boyle, RMR Notary Registration No. 203748</p>

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0830

A			
ability	8:25 10:8 11:12 30:4	agency	alleges
22:18 30:24 32:14	36:23 76:11 80:18	75:21	15:23
able	82:8	agent	Allen
16:10 19:18 30:19	achieve	27:17 29:4	2:8 4:14 7:21,23
51:17	27:11	agents	allowed
about	across	26:14 27:17,21 29:5	33:11,12
7:8 10:1 11:10 12:13	11:16	aggregate	along
16:11,14,24 17:25	Action	82:20	54:23 86:19 87:9
18:6,15,17 19:2,2,8	1:6	aggregated	already
19:10,11,12,15,18	activities	20:23 83:17 84:21,23	31:14 64:13 77:9,24
20:14,21 21:2,6,16	62:2 74:19 75:14	aggregating	also
22:12,17,21 25:24	activity	83:7	7:3 15:20 25:6 30:21
28:18 30:5 36:9,9,10	25:1,22 55:4 56:6 58:2	agile	31:25 39:4 44:23
38:8 39:12,15,25 40:5	58:3 59:18 62:15	14:19	48:1 52:17,18 54:12
40:14 41:11,12 42:1	75:7,22 79:7 82:9	ago	54:21 60:1 69:19
42:13,16,19,25 44:7,9	actual	38:8 42:16	70:18 80:25 83:13
44:20 45:1 47:5,20,24	29:25 30:18 33:12	agreement	84:17 88:5,21 89:3,8
48:6,14 50:7,24 51:2	actually	2:12 16:3	always
51:9 52:24 54:19	11:15,19 13:2 15:22	ahead	13:10,12
55:15 56:5 62:12,21	20:4 21:18 26:10	8:1,5 18:22 24:13 26:3	amount
63:4 70:2 74:19 75:6	30:8 33:8 62:24	26:23 28:13,22 37:12	50:6
75:21 76:12 77:8,17	69:16 72:15,25 73:3,8	40:18 45:17 52:16	amounts
77:18 79:8 80:24	74:7	53:10 66:15,23 68:21	81:22
83:17 85:12 86:16	addition	70:10 73:24 77:2	analysis
87:7,21	52:17 80:21	81:6 84:7	8:20 10:7,9,18 25:9
access	additional	alert	26:7,14 27:3,22,22
17:21 18:1 20:24 29:9	15:2	28:9	29:3 52:13 83:11
29:25 30:19 33:3,11	address	align	85:13
35:19,20 36:6,8,9,11	7:18,20,23	70:16	analyst
36:15 52:3 65:17	affirmative	all	8:11 13:2,3 14:21,25
66:2,10 67:1,4 68:2	7:2 72:7	10:6 18:10,17 20:9	15:2,9 17:2 21:21
77:10,20 78:2,7 84:12	affirmed	24:19,21 27:5 30:4,25	27:6,10,12,15 28:14
89:7,8,9,11,24 90:1	6:4	31:8 34:10 37:21	28:20 29:11 32:5
accessed	affixed	38:6 45:23 49:17	analysts
17:19 20:10 31:22 67:5	92:14	51:2 52:9 55:6 56:5	8:16,22 17:3 84:12
89:4	after	64:19 68:11 69:4,13	Analytics
accessible	14:11 47:22 57:16,17	69:22,23 73:17 77:12	13:22
16:16	58:23 62:8,9 63:2,10	77:12,17,21 78:17	analyze
accessing	75:20	80:16,19 82:20 83:9	66:6
17:24 29:16 50:15,21	again	83:17 84:13 88:20,25	analyzed
51:3 55:1 86:22	24:14 33:4 38:17 42:17	89:5 91:1,2,4	62:25 83:22
accommodate	45:18 48:23 51:21	allegations	analyzing
7:10	55:14 58:19 67:12	44:12	66:8 84:8
account	70:12 71:10,17 89:21	alleged	and/or
28:3,4,6	against	40:5 46:6	47:6 60:8 79:13
accurate	25:2 28:1,15 29:12	allegedly	annual
	68:20 76:2,7	20:10 44:20 46:15	37:15,24,25

<p>another 14:20 68:18,23 84:9 88:5,12</p> <p>answer 6:20,21,25 7:5 8:1,5,6 18:22 28:13,22 31:10 37:12 40:10 44:15 45:5 46:20 47:11 53:10,16 58:5 60:4 64:7,8 65:9 70:11,21 71:3 74:6 77:2,4 78:6 81:10 83:1 88:3</p> <p>answerable 81:11</p> <p>answered 9:7 66:13,14,21 67:3 78:5</p> <p>answering 87:11</p> <p>answers 22:20</p> <p>any 7:3 14:16 17:13,16,17 19:22 20:20,23 28:5 29:16,17 32:2,5,8,14 32:19 34:18 35:14 38:9 41:2 42:1,2,17 42:19 43:8 44:1,3,19 52:24 54:9,25 57:24 58:8 59:10,16,21 61:1 61:9 62:1,11,12,15 63:7,9,14 65:22 66:3 66:5,8,18 69:19 70:5 70:8 71:6,23 75:6,21 76:17,23 77:7,20 78:23 79:2,12,13 80:7 82:21 83:6,7,8 84:20 85:16,25 86:1,8,23 87:19,22 88:15 89:16 89:23 90:11 92:10</p> <p>anybody 10:15 20:6 60:12 64:10 64:16,18 80:4,12,15 87:13</p> <p>anyone 59:7 60:17 75:8 76:5 90:17,23</p>	<p>anything 19:9 30:24 33:12 44:6 45:19 54:2,19 85:1 87:5,8,9,13 90:5 91:3</p> <p>applications 26:4,8,9</p> <p>applies 33:8</p> <p>Appreciate 91:6</p> <p>appropriate 57:9,11</p> <p>Approximately 9:21 22:2</p> <p>area 11:8 14:17 23:1 24:22 26:1 27:4,13,20 30:23 34:9 50:22 63:4 81:24 84:14</p> <p>areas 8:16,17 10:11,19,24 13:4 14:19 81:1</p> <p>around 33:3 40:6 49:19 50:3 83:11</p> <p>arrogant 86:3,4</p> <p>aside 39:24 42:17 47:20 51:16 57:24</p> <p>asked 16:2 41:12 43:18 44:7 54:6,9,21 60:22 63:5 66:13,14,21 67:2 77:20,25 78:5 79:20 79:24 82:16 90:12,22</p> <p>asking 6:17 45:18 77:8</p> <p>assess 82:23 83:2</p> <p>assessment 87:1</p> <p>Assistant 4:17 68:9 72:14</p> <p>assisting 76:24</p> <p>associate 39:18</p>	<p>associates 9:17,18,18 33:5 38:24 83:3</p> <p>assume 72:5</p> <p>assuming 70:22</p> <p>assumption 55:10,12,13</p> <p>Attachment 18:13,14 65:14</p> <p>attention 62:17,20</p> <p>attorneys 42:18,22,24 43:2,4 45:19 48:3 57:25</p> <p>attorney/client 19:22 48:7 57:8 61:1</p> <p>authorization 49:8,13 50:7,10 69:15 69:18</p> <p>Authorizations 50:9</p> <p>auto 10:24</p> <p>automated 28:1 72:23</p> <p>automatically 72:16</p> <p>available 16:19</p> <p>aware 42:2 44:22,23 45:22,25 46:22 51:14 52:25 55:19 56:14,17 59:9 59:10,15 60:18,20 61:6,9,15,18,22,24 62:16 63:9 64:18 66:4,8 75:14 79:18 80:6,6,9,13,15 83:6 84:20 89:23 90:25</p> <p>AXELROD 3:5</p> <p>a.m 1:18</p>	<p>B 2:12 4:10 5:8 92:2,19</p> <p>back 18:6 20:19 29:8 43:10 49:20 58:23 72:5,14 72:14 87:2</p> <p>background 19:1 67:21</p> <p>backwards 12:19</p> <p>bad 39:23</p> <p>bank 10:23 50:13 80:25 81:1</p> <p>banking 10:24 11:4</p> <p>banks 13:16 63:17</p> <p>base 34:7</p> <p>based 29:5 36:5,15,18 37:14 67:9 70:13</p> <p>bases 77:12</p> <p>basic 36:11</p> <p>basically 6:16 10:2 13:7 17:2 24:25 26:6 49:8 68:23 81:18</p> <p>basis 34:23 37:15 40:21,23 46:10 55:12,13 76:9 85:18</p> <p>batch 28:1</p> <p>because 11:9 28:5 31:13 55:9 56:10 72:19 75:1 83:12</p> <p>become 14:25 46:22</p> <p>been 6:13 8:5,7 12:11,14,15 13:3,10,12 15:8 18:23 18:24 25:21 46:16</p>
---	---	--	---

50:17 60:11 63:1 70:13 74:13,25 75:21 77:25 79:4,20,24 80:4 80:13 83:22 85:17 before 2:12 6:13,20,22 7:5 8:8 13:14 14:4 19:2 20:16 21:9 24:9 26:19,21 40:1,8 41:3 42:11 44:11 54:25 56:17 59:5,8 60:12 61:22,24 62:9,13,22 65:11 75:19 81:13,17 81:25 87:10 92:3 beginning 40:6 begins 25:9 behalf 3:2,14 4:2 16:10 behaviors 38:6 behind 18:15 being 6:4 28:20 35:8,15 41:5 53:8 54:1,23 83:15 believe 47:12 54:10 56:2 57:20 57:20 63:16 85:22 89:5 below 9:11,14,16 21:21 besides 12:10 43:8 best 22:18 48:6 78:20 between 17:17 31:12 48:18 50:13 57:23 74:25 75:6 83:13 beyond 63:22 88:18 Bhandare 24:16 biggest 11:1,6	bit 62:12 86:10 87:17 89:13,14 Bonan 1:7 3:14 6:12 16:16 20:10,24 21:12,19 22:12,16,22,23 23:9 23:24 24:2,11,14,21 25:12,16 26:19 27:11 28:8 29:8 30:19 31:4 31:10,13,22 32:9 33:24 35:19 36:12,21 38:10 39:12,14,23 40:12 41:3,10,11,12 42:1 43:7,20,24 44:16 45:12,23 46:14 47:6 48:14,20 49:2,16 52:11 53:19,19,20,24 57:18 58:11,21 59:2 59:18 61:10,16 62:15 62:16 63:3,19 67:5 68:4,14,24 69:5,14 70:1,19 74:19 75:9,19 76:2,5,12 78:10,22 79:13 82:7 86:16,18 87:6 90:1,11,22 Bonan's 32:13 40:8 56:6 58:2 60:7 79:6 both 22:16,17 23:5 38:18 Boulevard 3:9 Boyle 1:24 2:12 92:2,19 breach 76:16 79:5 breached 53:25 54:7 breaching 87:4 break 7:3,6 42:3,4 73:11 85:3 85:6 breaks 7:8 broader	37:9 Brooks 1:15 2:1 5:1,9,10 6:3,9 7:15,16 15:15,18 31:20 42:11 business 8:16,17 10:17 13:4,22 14:19 30:23 32:17,20 33:4 37:6,7 70:6,7 82:9 87:3 B-h-a-n-d-a-r-e 24:18 <hr/> C <hr/> C 3:1 4:1 5:1 6:1 call 12:21,22,24 13:1 17:13 17:15 25:7,8 26:7,11 27:18 29:4,5 30:18 52:12 86:2 called 26:2 68:8 69:16 84:13 88:6 calls 27:18 Came 57:15 CAMERON 4:18 capability 30:21 capacity 63:5 87:21 Capital 1:13 4:2,19,20 7:19,23 8:10 10:16,17,20 11:2 11:9,13 12:14,15,20 13:11,13,14,17 14:12 14:18 15:20,25 16:10 16:16,17 17:13 18:9 19:6,15,19 20:5,7,8 20:11,13,21,22 21:13 21:15 23:12,17,19 24:24 32:8,21 33:8,14 33:22 38:4,7 41:3 44:17 46:1 47:5,16 48:13,18,20 49:18	50:4 51:12,17 53:3 55:2,4,8,10,19,23 56:19 57:25 58:22 59:1,10,11 60:7,17 63:18,23,25 64:2,10 64:11,14,22,22 65:13 65:17 66:18,25 71:23 73:16 74:2 75:8 76:1 76:2,5,6,23 77:17 78:1,3,11 79:1,13,14 80:4,7,12,17 81:3 82:11,21 83:9 87:19 87:22 88:16 90:17,23 91:7 captures 50:5 68:19 car 10:25 11:3 card 8:12,17 10:9,12,13,15 10:16,20,22 11:1,10 11:12 13:3 18:10,11 18:12 20:12,21 24:25 25:1 26:4 27:10 50:4 50:4,11 63:24 64:4,11 64:22 65:1 73:17 80:19,20 81:3 82:8 cardholder 10:8,10 cardholders 25:3 80:18 cards 16:15 20:22 64:3,23 74:3 88:16 career 12:20 case 6:11 22:17 28:2 30:1 31:20 39:25 40:5 41:4 42:15 44:10,12 70:14 79:21 80:1,11 92:10 casual 23:1 catch 28:11 62:17,19 cause
--	---	--	--

56:19 CBT 37:23 CBTs 37:13,21,21 center 3:8 12:24 26:11 27:19 29:4,5 centers 12:21,23 13:1 26:7 52:12 certain 15:8,23 27:23 28:2 31:21 36:17 65:8 69:5 CERTIFICATE 92:1 certificates 14:16,18 certify 92:4 chain 23:3,6,7,20 24:19 38:16 chance 54:5,20 change 23:19 25:19 36:6 changed 63:19 changes 23:18 characterize 31:17 51:8 62:11 charge 25:9 charges 25:7,10 28:5 76:2,6 CHIU 4:17 CHRISTOPHER 3:4 chronological 12:18 circumstances 21:14 Civil	1:6 claimed 63:15 clarify 61:18 classes 15:10 37:3 clear 9:8 65:12 clicks 88:17,18 clients 15:24 48:11 57:13 close 29:14 48:7 code 8:19,23 9:4 11:19 15:8 15:11 28:14 29:12,15 29:23 30:2 35:8 37:25 38:2,2,4,6 53:25 54:8 69:1,2 76:16 78:9,11,18,20 79:2,5 87:4 coding 11:24 72:24 collections 8:18,25 13:6,8,8 college 14:5,8 columns 49:25 combining 89:14 come 18:6 20:19 26:4,8 27:18 28:5 46:9 72:5 72:14 77:15 81:12,12 comes 81:18 coming 67:21 commission 1:4 3:3,6 92:17 commit 25:3 Commonwealth 14:3	communications 38:9 61:1 companies 15:22,23 18:12 19:17 19:20 64:4 65:14,16 company 9:12 10:3 11:10,11 17:10 38:11 41:9 83:17 84:21 compare 11:2 competitors 64:20 complete 6:19,21 37:22 completion 37:23 complies 16:7 computer 8:19 15:8 29:23 31:23 32:10,15 33:13 37:14 37:17 67:16 69:1,2 computers 30:25 60:8,13 68:5 computer-based 37:19 concern 70:19 concerns 74:19 75:7 concluded 55:3 conclusion 52:5 conduct 37:25 38:2,3,4,6 39:24 40:5 41:4 44:9 53:25 54:8 76:16 78:9,11,18 78:20 79:2,5 87:4 conducted 61:10 confident 88:6 confidential 1:11 44:17 49:3 52:21 56:12 58:19 66:16	89:20 91:8 confirmation 45:12,15 61:16,19 confusing 84:4 Congratulations 13:25 consequence 41:24 considered 26:17 considering 76:6 consistently 78:2 consumer 11:3 contain 50:3 container 17:18 contextualize 83:8 continue 63:9 CONTINUED 4:1 controls 33:2 conversation 40:24 47:18 conversations 22:9 23:2 46:25 55:15 conveyed 48:17 copy 15:19 core 29:11,13 Corporate 1:14 correct 11:11 14:14,15,22,23 15:6 19:13 22:1 24:9 24:10,12 28:17 31:23 35:10,12,13 36:19 38:1 43:25 45:20
--	--	---	---

46:7 50:18,19,22 51:25 54:13 55:24 57:2 58:17 61:17 66:1,3 69:6,15,22 70:20 71:12,16,20,22 74:20,21 76:22 78:4 78:24,25 82:15,18,19 92:5 correspondence 76:18 could 6:19 10:11 15:3 25:23 27:22 28:6 29:22,25 36:12 38:20 46:12 69:17,19 72:15,15,17 72:23,24 77:16 88:14 counsel 4:17 6:7,15 8:4,6 16:3 19:6,7 46:25 47:18 48:10 56:5 57:6,15 59:1 61:7,7 67:11 90:9 92:9 County 8:2 couple 10:25 43:3 49:7 50:14 54:6 57:21 62:7,8 courses 15:3 court 1:1 6:17 24:4 covered 48:23 59:21 77:12 covers 38:6 crazy 33:9 create 30:22 created 68:25 69:20 creates 17:10 creating 28:10 credit 10:13,16,20 11:10	16:15 18:10,10,11 20:11,21,22 24:25 25:1 26:4,6 27:10 50:3,4 63:24 64:3,4 64:11,23 65:1 73:17 74:3 80:19,20 81:3 current 12:11 24:1 25:6 currently 9:22 19:23 88:22 Custis 1:15 2:1 5:1 6:3 7:15 customer 26:5 27:23 50:4 71:5 customers 25:6,8 customer's 28:3 cut 36:17 52:16 68:22 C.L 5:10 <hr/> D <hr/> D 6:1 data 8:11,15,20 10:7,9,18 13:2,3 14:21,25 15:2 15:9 17:2,3 21:20 27:3,6,10,12,14 28:14 28:20 29:11 30:16,19 30:20,22 31:24 32:5 32:16 33:3 37:4,5 47:16 49:23,25 51:12 52:9 53:4 55:10 66:9 66:19 68:6,9 69:15,15 71:5 72:13,17 77:20 78:7 79:8 80:17,20,20 80:23,25 81:1,17,22 81:24,25 82:2,3,7,12 82:20,24 83:6,7,17 84:12,14,16,20,24 87:3,18 88:1,4,14,19 88:20,23,25 89:5,12 89:14,15 database 16:12,15,18,19,20 17:3	17:6,10,19 20:11,24 29:9,17,21 30:8,15,15 31:1,7,17,22,24 33:10 35:20 36:4,13 37:1,1 38:3 49:23 50:1 51:25 55:5 56:7 58:13 59:19 62:12,13 63:18 65:18,25 66:3,6 66:11,19 67:1,14,17 67:23 68:4,6,19 72:6 73:4 77:7,10,21 78:3 79:7 81:13,21 83:4,25 84:9,18 86:22 87:18 87:19,25 88:5,13 89:7 90:12,24 databases 28:15 29:12 84:18 date 50:5 53:22 62:13,21,24 74:22 75:5,7 79:21 80:1,5 David 3:5 24:2,21 day 27:18 29:13 54:14 92:14 days 50:14 62:7,8 DC 3:20 4:7 deal 10:10,11,23,24 deals 8:19 21:3 25:22 December 47:12,13 57:20 58:6,17 58:18 74:20,23 75:1 79:23 decision 12:7 57:17 decisions 12:2 dedicated 86:23 87:2 deep 80:22 defend	28:1 DEFENDANT 3:14 defendants 1:8 6:7,11 87:23 90:9 defenses 28:1 definitely 37:25 definitions 87:25 degree 13:20 14:5,9 15:1,5 demonstrating 87:17 department 21:21 26:1 39:19 depends 69:7 72:22 Deponent 16:13 deposed 6:13 8:7 42:15 deposition 1:13 2:1 5:9 15:21 16:5 18:17 19:2 20:17 21:10 31:7 63:22 64:25,25 77:4 92:4 describe 24:23 86:2 described 86:16,18 description 8:13 30:4 36:23 86:8 deserve 26:6 design 14:20 desktop 32:1,6 details 85:20 detection 76:24 determination 82:11 determine
--	---	--	--

32:19 51:17 70:6 72:9 83:18 determined 79:1,15 difference 36:12 83:13 different 8:16,24 11:16 12:22 15:3 24:14 25:12,13 25:25 31:15,18 33:3 36:2,15 43:12 68:7,10 77:16 81:7 direct 23:20 54:3,3 60:5 directed 58:1 direction 92:8 directly 9:14,19,20 17:24 21:22 38:14 56:22,23 67:4 72:17 81:12,18 director 8:11 9:13 12:13 23:10 23:10,13 24:3,7,8 27:3 directors 9:15 23:16 disciplinary 41:2,5 42:1,2 disclose 48:13 discovered 79:15 discuss 39:17 48:9 discussed 17:1 41:6 42:25 43:14 45:19 48:10 55:16 62:10 76:13 79:6 82:6 86:8,21 discussing 73:15 82:5 discussion 42:8 51:19 78:10 discussions 39:20 48:3 55:19	dispute 25:6,7 disputes 21:20 24:20,22,24 26:1 26:17 27:4,5,6,18 distinction 17:17 38:18 distributed 88:13 DISTRICT 1:1,1 DIVISION 3:7 document 16:5 18:15 45:14,23 61:19 78:17 documentation 51:15 61:6 documents 42:19 43:1,2,4,8,22 44:1,24 45:10,11 60:23 61:4,9,23,24 62:2 67:9 doing 10:7 11:19 40:13 42:3 47:24 49:5 57:13 70:13 77:13 83:11 86:24 dollars 64:22 done 19:5 34:1 35:11 37:16 63:2 70:23 79:4 82:25 87:8 down 6:18 76:17 download 31:25 32:3,5,14 downloaded 32:20 downloading 29:16 32:9,17 drive 4:20 7:19 32:1,6 33:21 driving 86:11 duly	6:4 during 14:13 16:17 20:12 23:12 57:25 79:12 duties 40:25 52:8,11 70:16 Dwight 1:15 2:1 5:1,10 6:3 7:15 <hr/> E <hr/> E 3:1,1 4:1,1 5:1,8 6:1,1 earlier 61:14 62:10 74:18 76:14 early 15:10 53:23 easier 6:23 7:9 easiest 12:17 EASTERN 1:1 easy 86:18 educated 19:18 education 13:19 effectively 40:25 efficient 34:5,5 effort 70:5,8 efforts 76:24 either 13:4 36:24 59:15 62:7 69:14 electronic 50:12 element 47:3 elementary 29:20 else	20:6 44:6 50:24 51:9 52:5 53:14 54:2 80:12,15 81:13,17 84:17 85:2 90:5 employed 46:1 88:7 92:10 employee 36:18 39:23,24 43:15 55:2 employees 21:15 34:19 36:5 50:21 59:11 78:3 employment 16:17 20:13 23:12,17 79:12 ENFORCEMENT 3:7 engage 76:23 enough 18:23,25 77:14 ensure 77:22 entered 35:9 69:5 71:14,19 entire 13:3 14:13 34:6,15 65:1 Entirely 72:22 entities 65:16 83:19 entity 77:7 ESQUIRE 3:4,5,15,16 4:3,10,18 establish 40:4 established 36:8 estimate 22:8 EUGENE 3:16 even 26:10 42:24 58:9,25 75:20 81:11 82:4
--	--	--	---

85:22,23 88:14	explain	71:9	following
event	9:10 10:12 23:6 25:14	figure	16:14
59:13	26:3 33:25 53:7 75:9	57:12	follows
ever	explained	file	6:6
6:13 8:8 28:23 38:19	6:15 63:8	87:22 88:13	follow-up
53:7 59:5,16,23 60:7	explaining	filed	54:6 63:7,9
60:22 62:3,14 75:13	41:20	6:12 15:22	foregoing
75:19 76:1,5,17 86:2	explanation	files	92:3,5
86:13 88:14 90:22	54:16 63:11 76:12 79:8	21:14 87:23	form
every	79:14 88:10	finalized	7:25 11:20 18:18 28:12
27:18 29:13 38:20	extend	85:17	28:21 30:9 31:2,3
68:19 80:17 88:15	88:18	finance	32:22,23 34:21 35:22
everything	extent	10:24	37:10 38:5 39:9 40:9
6:18	31:12,16 32:10 48:2	financial	44:13 45:4 47:7,25
exact	60:25 61:11 77:24	92:11	49:24 51:5,14,21 53:9
40:23 53:22 57:22 74:7	85:14	financing	53:15 56:21 57:1
75:5	external	11:3	58:4 59:3 60:1,2,14
exactly	19:7	find	64:5 65:19 67:8
36:3 37:2 57:22 73:8	extract	55:4	70:25 71:25 72:8,11
EXAMINATION	8:19 30:20 68:23	fine	72:25 73:5,7,22,23
5:1 6:7 90:9	e-mail	36:24 41:15 57:14 65:9	74:4,11 75:11,15,23
examined	45:12 61:15,19 72:16	73:12	76:8,15,19,25 78:13
6:6	72:20,21 73:1	fire	78:19 79:3,17 81:15
example		57:17	84:6 86:25 87:14,15
13:5 17:23 27:17,21	F	fired	87:20,24
33:7 49:16 56:18	face-to-face	52:20 53:8 57:24 63:19	formal
65:24 68:7 83:8,16	38:25 53:12	firing	38:10 85:17
84:21	fact	12:1,3	format
examples	87:7	firm	83:24
10:25 85:25 86:1 88:15	factors	6:10 33:10	forward
EXCHANGE	85:12	first	12:18 69:12
1:4 3:2,6	Fair	6:4 16:8,12 30:3 47:4	found
Exhibit	77:14	53:8 74:19 88:24	34:15 70:1
5:9,10 15:14,15,19	fairly	five	foundation
expanded	8:15	9:22,23 19:8,11 42:5	73:2 77:6
13:6	fall	flagged	four-year
expect	21:25	63:2 79:7	14:5
70:22,24 71:4 82:13,16	far	flip	frame
expectation	87:24	16:4	57:22 58:6 62:25
33:5	fashion	FLOOD	fraud
expectations	72:24	4:18	8:18,24 13:9 21:20
52:15	feel	floor	24:19,22,24 25:4,21
expected	31:9	22:25	26:1,9,10,17 27:3,5,6
43:17 70:23 71:7 82:6	few	flows	27:9,18 28:1,9,11,16
83:12	42:12	30:16	76:24 83:12,19 84:22
expires	field	focus	fraudster
92:17	69:16,24	52:7 71:4	28:6
	fifteen		

fraudulent 25:1,2,23 27:24	general 4:17 17:19,22 19:16 36:10	government 75:21	83:2,21 86:20
free 31:9	generally 38:4 39:22 47:3 62:22 80:23	graduating 14:11	head 53:23
frequency 34:16 49:9,14 50:16 51:19,24	Generically 29:2	graphical 68:8	hear 42:19,25
frequent 22:5	getting 40:19 41:6,16,18 48:7 57:7 85:10 87:8	greater 35:20	held 2:1 12:20 42:8
frequently 22:22 34:12,14 50:20 50:21 52:3,10 55:1	give 6:21 7:13 8:13 10:19 12:6 23:22 26:5,11 33:7 74:22 78:20 79:13 80:23 88:10	group 9:11 12:2 26:16 35:11 59:17,24 62:14	help 27:11 28:16 59:24 67:12
front 68:8	given 64:23 66:25 76:12 77:21 83:2 92:6	Grove 7:21	here 6:16,18 7:23 8:4 16:4 17:1,4 19:6 23:2 30:5 36:9 67:14,22,24 77:18
fulfill 32:11 37:23	Glen 2:8 4:14 7:21,23	guess 31:6 36:11 42:12 65:3 78:11 87:5	hereby 92:4
fully 9:6 35:25	Gmail 67:23 68:1	GUI 68:8 72:15	hereunto 92:13
function 9:2 29:2,10,24,25 49:10	go 8:1,5 16:8 18:22 24:9 24:13 26:3,19,23 28:13,22 37:12,20 40:18 41:12,25 43:10 44:11 45:17 47:3 48:5 52:16 53:10 56:4,19 66:15,23 68:21 70:10 72:14 73:24 77:2 81:2,6 83:25 84:7,9	guys 17:12 19:9 43:14 68:16	hey 28:4
functionality 29:13	goes 72:9 81:14	H	high 8:20
functions 8:24 28:19 32:11 36:18 49:15 50:18 82:14	going 6:16,18 12:18 16:8 20:19 21:18 22:17 29:8 31:3,11 33:7 38:17,19 43:21 46:17 48:1,22 63:8 69:12 77:3 85:14 87:2 88:3	H 5:8	higher 83:18
funds 50:12	Goochland 8:2	Hadoop 88:6,7,11,21,23 89:3,4 89:5,7,8,9,12,17,24 90:2	highest 13:19
further 58:8 79:4	good 22:14 39:23	half 42:16	highlight 37:4
future 80:10		Hampden-Sydney 14:8,11 15:5	hired 59:1
G		hand 92:14	hiring 12:1,3 24:15
G 6:1		handed 61:6,7 67:10	history 21:13 25:18,20
gas 81:2		handing 15:18	hit 49:16,19 69:18
gather 60:22 61:4		handle 24:24 27:17 88:14	hitting 52:14
gathered 61:3,6 67:9		handling 26:14 89:13	hold 80:5
gathers 83:9		happen 6:16 23:18 28:3	holders 64:22
gave 54:4 59:11		happening 28:10	holds 50:12
Gene 73:11		hard 32:1,6 33:21 82:23	holiday 74:23

holidays 58:23	immediately 72:8 81:4	29:24 30:1,2,8,20 31:21,25 32:4,6,9,15 32:20 33:10 34:8,19 43:5 44:17,21,22 45:2 45:8 46:5,15 47:6,23 48:4,21 49:4 50:3,25 51:3,10,13 52:6,22 53:1 55:14,24 56:10 56:13 59:17 63:4 66:6,11,17 67:5,6,23 71:15 72:9 73:4 74:10 77:7 81:12 82:5 83:23 86:22 88:11 89:16,20,21 90:12,23	70:12 interact 22:23 36:13 67:16 86:5 interacted 85:23 86:19 interactions 22:5,24 38:9 48:18 60:5 86:11 interest 92:11 interested 87:5 interface 68:8,16 internal 14:18 19:7 59:1 Internet 88:17 investigate 70:14 investigating 58:22 investigation 59:2,25 60:23 71:6 involved 10:13 14:21 38:12,14 issue 39:25 40:5 41:4 44:10 55:16 58:18 60:24 issuer 64:3 issuers 64:9 73:17 74:3 issues 41:3,5 42:1,2 85:21 itself 31:25 73:1
home 7:20	impact 34:6,15	informed 18:23,24 19:12 47:5 78:22	
honestly 36:2	impacted 34:4	infrequent 22:7,25	
host 70:15	impacting 33:2 34:10	Ingolia 3:16 5:3 11:21 85:5 90:6,10,15,17,20,21 91:1	
hour 7:8	implicate 48:2	initial 57:19,23	
hours 19:8,11	improper 51:11 52:13 53:3	initially 56:12	
house 80:25 81:23	improperly 53:4	inputs 29:22	
housed 88:4,5	inappropriately 34:4	inputting 30:2	
houses 80:19 81:22 88:14	include 30:7	inside 81:4	
HR 53:17,18 54:12	included 9:25	insider 78:15,16	
Huang 1:7,7 3:14,14 6:12 16:17 20:10,24 21:19 23:9	including 16:18 20:23 87:22	instance 79:6 90:11	
Huang's 21:13	inconsistent 41:6,17,18 43:20 49:9 49:15 50:16 52:15 85:11,16,19	instances 84:20	
hundred 90:3	independent 37:8	instead 83:14	
H-a-d-o-o-p 88:9	independently 71:15	instruct 77:3	
<hr/>			
I	individual 18:12 19:17,20 36:5 65:14 69:4 71:24 82:8,18	intended 8:6	J
idea 63:14	industry 10:14 18:10 63:24 64:1 64:12,15	intent	January 46:21 57:21 58:14,15 58:23
Identification 15:16	influence 12:4,5,8		Jason 3:15 6:9
identified 25:23 80:7	inform 75:13,19 76:1,5		JFK 3:9
identify 28:16 48:20 62:15	informal 38:9		job 1:22 8:14 11:17,23
identifying 23:8	information 15:24 16:19,20 18:5 19:23 20:2,7,10,20,23 21:2,4 26:12 29:17,22		
illegal 75:10			
imagining 67:22			
immediate 81:8,20			

25:11,18,19 27:2 29:9 29:11 30:3,7 31:9,13 31:14 32:2,11,13 36:18 38:12,15 40:8 49:10,15 50:17 52:7 52:11,15 70:13,16,23 82:13 jobs 13:15 14:14 joined 14:12 JONATHAN 4:17 JONES 4:10 7:10 judgmental 26:2 28:19 July 24:14 92:17 jump 21:18	22:3,19,20 23:16,19 24:5 27:2 28:13,24 29:23 33:5 36:3 38:19 43:1 46:9 48:5 48:16,17,18,21,23 50:24 51:2,9,9,9 53:22 56:5,14,16 57:14,14 58:24,25,25 59:4 61:2 62:24,24 63:19,25 64:2,10,14 64:16,18,19,21 65:4,4 65:7,8,9,12,15 66:25 68:11 73:3,8,20 74:2 74:7,9,14,16,23 75:4 75:5 79:20 80:4,12 83:19 84:4 85:12,12 89:16,19 90:1 knowing 19:2 knowledge 18:16 19:2,23 20:2,14 20:16 21:9,16 56:16 60:17 80:8 knowledgeable 16:14,24 18:15 19:15 21:2,6	later 20:19 latter 30:24 law 6:10 33:10 lay 10:13 24:23 67:21 layers 9:16 lead 8:15 11:23 leading 79:23 learn 40:5 46:14 47:14,17,23 58:20 learned 44:9 47:15 48:2,3,14 74:19,24 75:6 learning 71:10 least 15:22 26:20 37:23 46:6 61:15 63:15 81:8 leave 32:4 led 52:5 Lee 1:15 2:1 5:1 6:3 7:15 legal 46:25 47:18 55:15 56:10 57:6,15 58:24 61:7,7 67:11 legitimate 25:3,9 let's 12:17 15:13 22:13,22 23:21 26:19 28:4,8 31:21 39:24 40:4 41:12 42:5 49:20 53:8,19 65:11 72:19 82:3 88:12 level 8:21 9:3,24 13:19 36:6 levels	9:1 36:8 leveraged 69:24 leveraging 25:3 life 33:7 likes 32:1 limit 45:7 51:11 82:3 limited 18:1 32:17 33:4,24 37:6 56:13 89:10 line 26:6 48:1 54:3,23 lines 87:9 list 73:20 listed 18:13 65:14 Listen 67:21 listing 15:21 literally 68:9 little 9:7 62:12 84:4 LLC 4:19 LLP 3:17 6:10 loans 10:25 local 33:12 60:13 locally 30:25 31:23 33:21 log 55:5,7,8,9,18 56:18,20 56:24,25 57:16 58:12 60:19 62:4 67:12 68:13,14,18 69:4,13 69:22,23 70:24 71:4 71:11,18
<hr/> K <hr/> keep 55:5 KELLY 3:4 7:25 18:18 28:21 30:9 31:3,11 32:22 34:21,25 36:14 40:9 40:17 45:6 46:17,23 47:9 51:5 60:2,14 61:11 65:20 66:12,14 66:20,22 70:25 71:25 72:12 73:5,22,25 75:17 76:15,25 79:3 81:16 84:6 85:14 87:14,20 91:3 key 39:19 kind 6:15 11:19 14:16 25:20 25:20 33:25 38:8 68:5,14 70:18 86:21 knew 23:2 55:23 know 6:25 7:1,4 11:15 12:20 16:9 20:4,6,8 21:19	<hr/> L <hr/> L 3:5 lands 81:17,17,24,25 language 15:12 35:25 laptop 33:22,22 laptops 60:21 large 8:15 70:15 71:8 83:14 84:15 89:15 larger 27:7 88:14,15 89:13 largest 11:12 64:2,9 last 40:6 63:21 74:12 75:1 75:2,3 77:15		

<p>logs 57:4,20 58:14,15 60:20 62:14 67:10</p> <p>Lois 1:24 2:12 92:2,19</p> <p>long 12:11,14,20 25:18 73:11</p> <p>longer 38:20 81:25</p> <p>look 25:1 33:11 52:11 55:18 56:19,24 58:2,12,16 59:17,17 64:17 70:24 72:10,17 83:13 84:22 85:4 88:17</p> <p>looked 43:1 56:6,18,24 57:9 57:10,16 58:14,15 62:14 87:7</p> <p>looking 18:8 25:4,22 26:9 27:9 34:19 35:15 49:22,25 57:3 58:13,21 60:18 67:18 68:1 69:10,14 70:18,22 82:9,17</p> <p>looks 69:2</p> <p>lot 6:23 29:21 38:20 51:25 72:24 80:20 81:23 87:8</p> <p>lower 9:3 41:8,22,23</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>machines 50:12</p> <p>mainly 11:18</p> <p>maintained 16:16 78:17 88:21,23 89:3</p> <p>maintains 80:16</p> <p>making 25:2</p> <p>manage</p>	<p>9:2 11:23 27:5</p> <p>management 14:19 17:11 23:3,6,7 23:20 30:16 38:15 47:1,19 55:6,15 68:19</p> <p>manager 23:10,13,21 24:7,8,15 40:24 85:21 86:2,9</p> <p>managers 9:15 23:16,23 39:1,3,4 43:23,23 52:18 86:17</p> <p>managing 9:3,14 11:18 87:6</p> <p>manipulate 30:21,22 31:24 84:11 84:14</p> <p>manipulated 16:21</p> <p>manner 31:17,18 49:9,14</p> <p>marked 15:13,15,19</p> <p>market 18:9 19:15,18 20:4 63:23,25 64:11,14,19 64:25 65:4,4,13 73:15</p> <p>massive 30:15 34:2 81:22</p> <p>MasterCard 66:10</p> <p>master's 13:20,21 14:2</p> <p>material 48:7 78:21</p> <p>math 15:5</p> <p>mathematics 15:1</p> <p>Matt 24:3,21 26:24,25 27:1</p> <p>MATTHEW 4:10</p> <p>McGonigle 2:5 4:4,11</p> <p>mean 12:6 17:1,17,22 23:22 31:9 34:5 41:7 49:20</p>	<p>68:15</p> <p>means 25:21 41:8,22</p> <p>meant 41:21</p> <p>meet 30:23</p> <p>meeting 39:17 42:18 43:14,23 53:12,14,24 76:14</p> <p>meetings 44:3 57:24</p> <p>mentioned 8:7 9:10 19:10 23:6 33:23 43:13 44:9,25 50:20 51:19 54:25 65:11,24 73:15 74:18 74:23 82:17 85:10 86:5</p> <p>mentions 62:4</p> <p>merchant 50:5,11,14 52:8 69:11 69:17,24 71:6 83:22</p> <p>merchants 62:5 70:14,15 71:6,8 83:15</p> <p>Merit 92:2</p> <p>message 76:21</p> <p>met 19:11 59:5,7</p> <p>method 68:10</p> <p>methods 68:11</p> <p>might 8:4 9:17 25:1 42:21 58:24 81:7,10</p> <p>mind 42:4 73:10</p> <p>minutes 42:6</p> <p>mischaracterizes 51:6,22 61:12</p> <p>missing</p>	<p>77:22</p> <p>mistaken 11:10</p> <p>misuse 47:5,16,22 48:21</p> <p>misused 44:16,20 46:6</p> <p>misusing 50:25 52:6 55:10 82:12</p> <p>modules 37:14</p> <p>monitor 34:9,17 35:12</p> <p>monitoring 32:19,21 33:1,23,25 34:18,25 35:4,15,17 35:17 62:12,13,18 63:20</p> <p>monitors 63:18</p> <p>month 22:9 62:23</p> <p>months 55:7</p> <p>morning 6:9 81:9,20</p> <p>Morvillo 3:17 6:10</p> <p>move 18:7</p> <p>moved 13:1</p> <p>moving 20:9</p> <p>muddled 31:5</p> <p>multiple 72:18</p> <p>Murphy 2:5 4:4,11</p> <p>M-a-t-t 24:6</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 3:1 4:1 5:1,1 6:1</p> <p>name 6:9 7:13 17:6,12 69:17</p>
---	--	--	---

69:24 named 17:8 names 12:22 17:16 23:22 58:9 58:10,19 Nan 1:7 3:14 6:12 16:17 20:10,24 21:13,19 22:12,16 23:4,25 25:12,24 26:20,22 31:5,10 33:24 35:19 36:13,21 38:10 39:13 39:14 40:14,15,19 41:10,11,11,12,13 43:7,20,24 44:16 45:23 46:14 47:6 48:14 49:2,17 52:7 54:11,12,17 56:6 57:17 58:11,21 59:2 59:18 61:10 62:15 63:19 67:5 68:4,24 74:20 75:9,19 76:2,6 76:12 78:10,22 79:13 85:10 87:7 90:1 Nan's 25:25 28:18 31:13 48:21 58:3 60:8 68:14 86:2 87:16 nature 70:18 necessarily 89:19 need 7:3 12:9,22 27:23 37:6 42:3 58:16 63:13,14 68:12 80:13 needed 14:24 15:4 needing 79:8,8 needs 30:23 neither 92:9 network 25:8 31:1	never 8:7 78:22 New 16:3 next 6:22 18:7 47:23,24 79:24 81:8,20 Nilesh 24:16 Nobody 78:7 Nodding 7:2 72:7 nonbusiness 34:20 35:16 44:23,25 45:2,8 49:4 51:14,18 52:22,25 55:3 59:19 79:15 non-final 85:19 normal 82:9 notarial 92:14 Notary 2:13 92:1,3,20 notes 85:4 nothing 6:5 52:8 notice 31:7 57:19,23 notified 42:14 47:4,22 58:16,18 63:3 75:21 notify 34:11 November 63:1 69:12 number 11:13 34:2 69:25 70:1 70:17 71:8 numbers 11:15 83:15 NW 4:5 N-i-l-e-s-h	24:18 <hr/> O O 5:1 6:1 object 18:18 19:21 30:9 31:3 31:11 36:14 46:17 48:1,22 60:2,14 61:11 63:21 70:25 71:25 73:5,7 85:14 87:20,24 objection 7:25 8:4 11:5,20,21 18:20 22:11 28:12,21 30:11 31:2,16 32:22 32:23 33:16 34:13,21 34:22,24 35:22 36:7 37:10 38:5 39:9 40:9 40:11,16,17 44:13 45:4,6 46:18,23,24 47:7,9,25 48:15 51:4 51:5,21 53:9,15 55:21 56:8,21 57:1,7 58:4 59:3,20 60:1,16,25 61:13 64:5,13,24 65:19 66:7,12,13,20 66:21,22 67:2,8 69:7 70:8 71:2 72:11,12 73:22,23 74:4,11 75:11,15,17,23 76:8 76:15,19,25 77:1 78:5 78:13,19 79:3,17 81:5 81:15,16 82:22 84:2,6 86:25 87:14,15 90:14 obtain 14:9 60:7 obtained 15:24 18:16 obtaining 30:1 obviously 10:4 22:16 occur 34:12,14 occurred 57:19 83:16 occurs 34:11	October 1:17 92:15 offended 90:7 officer 92:3 offices 2:2 13:11,12 16:3 official 87:21 Off-the-record 42:8 okay 7:1 10:6 18:24 19:5,14 20:6,19 23:9 24:1 25:24 26:13 32:19 36:5,25 47:20 51:24 53:5 54:5 57:16 58:15,20 67:13,25 69:13 70:5 old 7:16 once 7:8 22:8,9 one 1:13 3:8 4:2,19,20 7:19 8:10 10:16,17,20 11:2 11:9,14 12:14,15,20 12:25 13:11,13,14,18 14:12,18,20 15:20,25 16:9,10,12,16,17 17:13,15,15,18,20,24 17:25 18:2,7 19:6,19 20:5,7,8,13,21,22 21:13,15,24 23:12,17 23:19 24:24 27:8,15 28:10 31:6,17 32:8,12 32:21 33:8,15,22 34:4 35:1,20 36:11,17,22 38:4,7 41:3 44:18 45:15 46:1 47:5,16 48:13,18,20 49:11,18 50:4,12 51:13,17 52:12 53:3 55:3,4,8 55:11,19,23 56:19,24 57:25 58:22 59:1,10 59:11 60:7,17 61:8,15
---	--	---	--

61:18,19,19 63:16,18 63:25 64:2,10,14,22 64:23 65:17,17 66:18 66:25 68:10 70:13 71:7,23 72:19 73:16 74:2,2 75:8 76:1,2,5,6 76:23 77:17 78:1,2,3 78:11 79:1,6,13,14 80:4,7,12,17 81:3 82:10,11,21 83:9,14 87:19,22 88:8 90:3,6 90:17,18,23 91:7	8:3 9:15 10:11,19 11:2 11:18 12:8,19 18:14 21:22 34:10 35:20 39:8 40:24 42:21 43:8,23 44:1 45:1 49:11,18 50:21,24 51:18 52:2,24 61:8,20 62:1,3 64:4,19 65:16 71:15 78:3,15,21,23 79:2,2,5,13 80:7,20 80:23,25 84:17 85:20 86:8,10 87:16,19	86:6 particular 14:17 27:19 29:4 35:17 80:1,10 83:22 particularly 72:2 83:20 parties 20:21,25 21:3 66:8,19 76:23 77:8,10,21,25 78:8 84:24 89:17,22 89:23 92:10 party 17:8 65:16 66:5 77:6 84:23 90:13,24 part-time 13:15 14:14 passive 90:15,16 past 25:20 55:7 patience 36:20 payments 25:3 pending 7:5 Penn 3:8 PENNSYLVANIA 1:1 people 9:2,2,3,4,10,17,19,22 9:23,24 10:1,3,5,6 11:8,13,18 12:8,9 13:7 17:23 21:24 22:19,19 23:13 25:2 34:8 35:12 52:2 58:1 62:17 people's 39:8 percent 41:23 90:3 Perfect 25:17 perform 8:20 performance	23:3 26:12 27:17,20 29:5 35:5,6,7,8 38:13 38:15,23 39:18,22 41:25 43:10,12,13,19 85:11,21 86:7 87:16 87:23 performed 35:16 performer 40:12,19 41:8,22 86:19 performers 41:23 performing 26:15 40:25 period 14:13 19:11 23:14 40:2 49:17 58:1 69:6,12 70:3 periods 81:23,24 person 10:13 23:8 34:17 39:19 54:12 63:8 personal 20:12 21:14 22:5,24 32:10 33:22 60:21 personally 22:3 36:1 86:13,15 89:4 perspective 72:4 Peterson 4:3 9:5 11:5,20 18:20 19:6,21 22:11 28:12 28:25 30:11 31:2,16 32:23 33:16 34:13,22 35:22 36:7 37:10 38:5 39:9 40:2,11,16 42:7,21 44:13 45:4,18 46:2,12,18,24 47:7,25 48:15,22 51:4,6,21 53:9,15 55:21 56:8,21 57:1,7 58:4 59:3,20 60:1,16,25 61:3,13 63:21 64:5,13,24 65:6 65:19 66:7,13,21 67:2 67:8 69:7 70:8 71:2
ones 8:23 70:7 One's 7:23 18:9 19:15 20:11 63:23 64:11 65:13 88:16 onwards 25:21 63:1 on-the-record 59:11 operation 11:12 operational 17:20 27:25 29:3 operations 8:12,17 10:10,12,15,20 10:22,23 11:1,12 13:3 operator 83:25 opposed 30:2 36:13 89:12 ops 17:15,20,25 18:2 36:11 oral 38:21,22,25 39:2 order 12:18 organization 8:12 17:23 21:23,25 27:7 65:1 organizations 11:16 originally 15:20 56:6 other	others 12:6 85:24 86:12 otherwise 38:19 92:11 outcome 92:12 outgrowth 43:22 outlets 13:17 output 72:6 outside 10:20,22 59:1 77:4 overwriting 28:19 own 30:22 78:20	<hr/> P <hr/> P 3:1,1 4:1,1,3 6:1 PA 3:11 page 5:1,9 21:12 Pages 1:23 Panas 24:3,21 26:24 Panas's 27:1 part 13:16 21:1 25:7 30:24 32:2,13 35:14 37:9 39:19 42:15 82:11	

72:11 73:7,12,23 74:4 74:11 75:11,15,23 76:8,19 77:1,3,9,14 77:24 78:5,13,19 79:17 81:5,15 82:22 82:25 84:2 85:3,7 86:25 87:10,15,24 90:8,14,16 91:7 Philadelphia 3:11 picked 72:20 pinging 51:25 place 33:14 placement 74:7 Plaintiff 1:5 3:2 plan 41:25 platform 67:17 platforms 68:7 play 89:15 played 15:1 please 7:14 28:23 29:18 45:16 59:22 67:20 82:10 90:8 plus 80:20 point 13:2 19:1 21:7 22:14 32:6 34:10 48:13 54:25 55:25 56:13 58:9,11 71:23 79:12 83:22 89:10 policies 54:1,8 78:15,21,23 79:2 policy 78:10,12,16,16,17 87:3	poor 40:20,21 poorer 86:7 pops 68:2 position 8:10 12:12 17:2 positions 12:19 21:21 possible 18:11 19:16 24:24 potential 26:9 35:16 47:5,16,22 48:21 55:16 58:16 62:5 75:7 80:7,9 83:18 85:15,18 potentially 41:24 73:17 75:10 82:8 82:17 85:10 practical 72:4 practically 68:15 preamble 16:13 precise 74:22 preparation 18:25 19:4,5 42:20 44:4 prepare 39:4,7,12 44:6 prepared 19:7 39:6 42:13 77:16 prepping 20:16 21:10 president 9:14 press 76:2 pressing 76:6 Presumably 71:14 presume 35:11 66:2	pretty 22:25 29:14 43:3 54:3 primary 9:2 11:22 18:2 27:14 principal 9:17 printed 20:11 privilege 19:22 privileged 19:10 probably 7:8 18:6 31:4 problematic 77:23 process 14:19 processes 17:20 produced 67:6 produces 68:16 product 17:7,7,8 production 30:17,17 81:19,21,23 88:4 program 67:15 prohibited 32:9 project 63:13 proper 37:5 properly 9:7 proprietary 17:12 44:17 49:4 52:22 66:16 68:5 89:20 provide 6:20 27:20 54:16 84:22 84:24 provided 55:24 79:7	providers 66:5 Public 2:13 92:1,3 pull 30:20 55:8 71:15 84:17 84:19 pulled 55:7,9 69:17,19 pulling 30:8 52:9 72:17 purchases 18:11,12 purportedly 50:25 purpose 32:17 33:4,6 45:2,8 52:25 59:19 82:21 83:7,10 89:11,13 purposes 8:23 18:16 32:21 34:20 35:16 37:6,7 44:23,25 46:6,15 49:4 51:18 52:22 55:3 79:16 87:3 pursuant 2:12 29:9 put 39:24 42:17 51:16 63:17 putting 47:20 57:24 pyramid 10:2 P-a-n-a-s 24:6 P.C 2:5 4:4,11 p.m 91:10 <hr/> Q <hr/> quarter 40:7 queries 34:9 35:15 43:7 52:17 52:19 55:6 68:24,25 69:4,11,14,22,23 70:6
---	--	---	--

70:12,14,17 71:11,14 71:19,21,24 72:2,5 79:14 query 34:5 35:7,8 62:16 63:4 63:6,13 68:20,23 69:3 69:8,9,10,18,21 83:23 question 6:20,22,25 7:5 18:19 26:5 28:23,25 29:18 30:10 31:12 32:2,12 32:25 33:17,19,20 35:14 36:12 38:20 39:10 46:2,12 52:23 54:21 56:3 59:22 60:15 62:1 63:21 64:6,16 67:19 71:1 72:1 73:6 76:4 77:15 87:10,21 88:24 90:7 90:18 questioning 48:1 questions 6:17 9:6 22:17 27:8 38:17 42:12 54:6,9,22 60:5 91:4 quick 8:13 85:3,5 quickly 9:7 57:17 quoted 69:25	43:19,20 85:11,16,17 85:19 ratings 40:20,22,24 43:10,14 reading 92:8 reads 9:7 real 42:12 really 7:10 26:10 52:8 reason 17:16 29:8,17 52:19,20 56:9 83:9 86:6 reasons 55:2 recall 23:23 39:22 62:8 73:18 86:4,9 90:11,22 received 55:14 69:13 recent 24:8 25:20 88:6 recently 26:20 recess 42:9 73:13 85:8 recommendations 12:6 record 7:13 8:5 16:1 31:5 42:7 61:8 65:12 91:10 92:5 recoveries 8:18,24 13:8,9 reduced 92:7 refer 36:22 reference 59:13 referenced 78:9 referencing 17:4 reflected	50:2 81:4 regard 19:24 regarding 8:24 20:2 45:10 61:16 62:2 80:17 regardless 9:24 Registered 92:2 Registration 92:20 regulatory 63:13,14 79:9 related 11:18 12:24 61:9 70:7 70:7 92:9 relates 31:8 74:10 relationship 38:11 relative 64:4 relevant 31:18 remember 40:21,23 41:2 54:9,22 70:1 79:9 reminds 27:8 repeat 59:22 67:19,19 71:17 76:4 82:10 88:24 90:18 rephrase 29:18 32:12 39:10 46:3 46:12 47:13 report 9:14,16,19,20 10:3,4,6 21:22 23:9 83:24 reported 1:24 21:23 23:22 24:2 24:8,11 26:20,22,24 reporter 6:17 24:4 92:1,2 reporting 8:20 10:5 13:7 23:23	24:15 27:15,16,20,21 29:3 reports 23:10,11 26:25 27:16 39:15 represent 6:11 16:1 22:16 76:1 representative 1:14 53:17,18 request 56:18 59:24 91:7 requested 57:5 92:9 requesting 71:16 requests 59:16 require 32:3 requirements 37:15 research 27:24 58:8 79:4 respect 18:10,11 19:16,19 22:20 23:24 25:11 28:20 31:1,10 38:3,11 38:18 41:3 47:2 59:18 60:23 65:13 82:7 respond 54:5,20 response 54:7 79:9 responsibilities 8:14 11:17 25:12 30:3 30:7 31:9,13,14 32:3 32:13 70:23 responsibility 11:22 rest 86:6 restricted 17:21 18:1 36:10 restriction 32:14 restrictions
<hr/>			
R			
<hr/>			
R 3:1,4 4:1 6:1 raised 70:19 ran 68:13 69:10 ranks 64:3 73:20 rate 38:23 83:19 84:22 rather 22:7 71:7 81:20 rating 39:18 41:6,17,19 43:12			

32:8,16 result 68:17 69:21 results 71:21,24 72:3,16,25 86:11,13,15 retail 10:23 13:17 69:14 retention 12:25 78:17 reveal 45:19 review 39:8 42:19 60:12 61:9 62:1,6 86:13,15 reviewed 39:15 42:22,24 43:2,3 52:17 62:3 reviewing 38:12,15 reviews 38:21,22,25 39:1,2,5,6 39:7,8,12,22 40:8 43:13 reword 28:24 Richmond 1:16 4:21 7:24 13:10 13:12 Ricker 26:22,23 right 7:12 20:9 29:21 35:4,8 35:9 43:18 52:3 56:1 56:11,23 60:19 65:5 65:25 67:15,22,22 71:15 72:6 81:2 RMR 1:24 2:12 92:19 Road 2:6 4:12 7:21 role 11:23 12:1 13:2,6 14:22 15:2 17:3 23:8 25:14,25 27:1 28:9,19 29:4 70:13 roles	13:3,15 25:19 33:24 36:2,3,16 routine 71:7 rows 49:25 run 28:1 29:24 43:7 52:19 55:6 60:20 68:14,16 68:20,24 69:3,9 71:23 72:2 82:7 83:24 running 27:11 29:25 62:17 63:9 63:12 65:1 R-i-c-k-e-r 26:24 <hr/> S S 3:1 4:1 5:1,8 6:1 Sadler 2:6 4:12 sales/purchases 16:15 20:12,22 same 18:20 22:25 23:1,4,5 23:13 29:2 30:11 33:3 34:22 35:19 40:11,16,17 43:4 45:6 46:18,23,24 47:9 49:19 54:7,11,14,16 60:1,16 61:13 63:20 65:20 66:22 71:2 72:12 75:17 81:16 Samuel 24:3 SAS 84:18,19 sat 38:22 save 32:15 33:11,12,21 saved 20:11 30:25,25 31:23 60:13,18,19 88:11 saving 32:10 saw	28:2 83:14,14 say 6:18 11:15 12:3,5 17:22 18:24 22:8,24 25:8,19 27:15,25 28:4 31:21 37:21 38:2 49:14 52:12 53:2,24 54:19 57:21 72:19 74:12,25 76:11 78:2 85:22 87:13 90:3 saying 11:3 77:20 says 16:12 18:9 19:16 20:9 20:20 85:15 schedule 15:20 16:5 18:8 scope 16:18 48:15,23 49:14 50:16 59:20 63:22 77:1,15 82:13 83:14 86:21 Scott 61:20 screen 68:1 seal 92:14 search 68:2,16 searched 69:11,16 searches 82:7 86:24 SEC 6:11 8:3 15:22,23 44:3 46:7 48:10,14,17,19 55:20,24 56:14,16,19 59:5,7,12,16,23 60:6 60:23 61:5,7 66:25 67:7 75:13 79:24 second 16:5 21:12 45:16 52:7 section 16:13,22 sector 10:7,17 11:1	SECURITIES 1:4 3:2,6 see 16:1,22 18:14 28:9 30:20 33:8 45:14 52:18 68:4,6,10 71:24 72:2,20 73:11 88:12 seeing 68:3 71:11,19 seen 45:10 83:20 select 68:9 72:15 selected 20:23 sells 20:21 send 72:23 senior 8:11 9:13,15,18 12:13 17:2 sense 6:23 7:6,7 10:19 22:21 33:19,20 35:21,24 65:6 86:23 sent 48:24 61:4 73:4,9 separate 22:13,19 31:12 50:8,9 78:12,13,15 81:21 separately 23:24 September 12:16,21 series 6:17 37:20 served 15:20 service 66:5 SERVICES 4:19 servicing 8:18 13:5,9 sessions 38:23
---	---	--	---

set 15:11 72:15,22 92:13	54:23 86:4	67:15 68:13 83:11,16	specialized 26:1
sets 65:24 84:15 89:14,15	similarly 6:21	84:8,11 87:6	specialty 14:17
setting 77:5	simple 15:11	Somensatto 3:15 5:2 6:8,10 7:11,12	specific 12:22 14:24 24:22
settled 50:13	simplistic 49:24	9:9 11:7 15:13,17	37:13 41:2,5 56:9
several 21:21 57:3 74:12	since 12:15 15:9 56:14 63:19	18:21 19:25 20:1	58:13 62:5 64:8
Shady 7:21	sir 10:5 43:16 44:2,8	22:13,15 28:7 29:7	67:15 69:11 83:10
shall 16:14	sit 9:11 22:25 38:21,22	30:12 31:6,19 32:24	85:25 86:1 87:1
share 18:9 19:15,19 20:4	sitting 67:16	33:18 34:23 35:1,3,23	specifically 52:2 69:10 82:4
63:23,25 64:11,14,19	size 12:9	37:11 39:11 40:3	specify 73:25
64:25 65:4,13 73:16	skill 15:11	42:5,10,23 44:14 45:5	spell 24:4,17 26:23 88:8
89:21 90:12,23	skills 15:4 85:22	45:9,21,24 46:19	spend 64:22
shared 89:17	slides 37:20	47:10 48:8 49:1 51:7	spent 72:24
shares 66:18	slightly 81:7	51:23 55:22 60:3	spit 29:23
shifted 13:5	soft 85:22	65:3,21 70:9 73:10,14	spoke 38:8
short 42:9 73:13 81:23,24	software 68:5	74:1,5 75:18 77:5,11	spreadsheet 50:1 62:4 72:8,18,23
85:8	sold 20:25 21:3,4	77:19 79:19 83:5	spreadsheets 43:3,6,9
shorthand 17:14 92:1	solid 40:12,19 86:19	84:3 85:1,9 87:12	SQL 15:11 28:14 29:12 34:6
should 21:2 31:4 32:17 33:4	solutions 27:25 29:3	88:2 90:5 91:2,4	68:9,20 72:14
36:22 41:1 50:17	some 8:3 9:1 13:16,16 14:24	someone 28:8 30:18 48:20 56:5	staff 12:9
52:8 70:13 89:18	19:1 31:1 32:6 36:12	60:7 63:3 77:16	start 6:22 22:22 23:21 25:16
show 72:25	37:9 40:6 45:1,22	89:11	31:22 53:8,19
shows 83:21	46:5 47:5 48:13	something 33:14 34:14 43:12	started 12:21,25 13:5,17 15:9
side 13:5 25:6	55:24,25 67:17 68:4	57:13 64:17 68:2	24:14 56:9
significant 86:12	68:16 71:15 72:6	83:20	starting 14:22
significantly 36:6	77:22 78:21 81:21	somewhere 29:21 67:24 81:13,17	State 2:13
signing 92:8	83:12,22,25 84:22	84:17	stated 35:18 37:15 52:18
similar	85:22 86:12 89:9	sorry 35:24 36:20 41:14,20	statement 34:6 61:20
	somebody 10:4 27:19 56:24 57:13	47:12,13 49:12,22	
		67:19 68:21 78:8	
		84:4 88:24	
		sort 83:12	
		sorts 68:11	
		source 81:11	
		sources 30:17,17 72:18	
		space 84:13	
		speak 11:16 18:23,25	

STATES	71:5	T	9:25 12:19 19:9 22:20
1:1	subpoena	5:1,1,8	25:18 27:12 29:23
station	5:10 15:15,19 16:2	table	33:9 39:21 44:19
81:2	substance	49:8,8,11,21,22,24	64:9
stenographically	42:11,12	50:2,7,8,9 52:14	ten
92:7	sued	68:18 69:18 82:4	64:9 71:8 73:17,21
step	48:10	tables	74:3,13
49:20	Suite	30:22 33:3 36:15,17	tense
Steven	2:7 3:10,19 4:6,13	49:7,13,16,16,19,23	90:15,16
26:22,24	summated	50:16 52:2 55:1	tenure
stick	83:15	68:10 69:19	23:19
28:8 31:4 70:19	summations	tabular	Teradata
still	71:8	72:25	17:7,9,11 28:15 29:9
11:24 26:16 84:11	summing	take	30:15 33:1,24 34:1,3
88:25 89:2	70:15	7:3,5,8 15:3,10 37:14	34:18 35:4,9,12 36:4
stop	support	37:18 38:20 49:20	36:22 49:23 55:5
63:5,6	8:16 24:25 27:15 52:12	73:10 85:3,5	60:19,20 62:13 63:5
stopping	supporting	taken	65:17,24 66:9 67:4,6
63:7	10:18 26:11 27:19	37:3 42:9 73:13 85:8	68:7,8,19,20 72:14
storage	supports	92:4,6	78:8 80:16,19 81:4,14
81:25	25:8 26:6	talk	81:18,22 82:1,2,20
store	sure	17:25 18:6 36:9,10	84:12,13 87:18 88:5
84:15	6:15 9:8 26:11 34:16	39:25 48:6 73:11	88:14,20 89:1,2,10,12
stored	37:2 57:22 61:21	77:17,18	90:12,24
16:20 49:23 81:13 84:1	77:12 90:20	talked	term
87:19	surrounding	19:10 47:20 52:24 56:4	81:25
stores	21:14	62:11	terminated
29:21	suspected	talking	24:2 26:21 49:2,3
strategic	57:13	22:12 30:5 35:24 36:9	52:21 54:1,24 61:23
89:15	suspend	45:1 62:21 80:23	61:25 62:23 75:4,8,20
Street	28:4	87:21	75:20 78:24
3:18 4:5	suspicious	tax	termination
stress	56:14,17 62:15	34:9	21:15 54:14 60:11,12
63:16 79:9	swipe	team	62:8 76:13
strike	50:11	8:15 9:15 12:9 60:22	terminology
44:10 47:21 51:1 82:5	sworn	85:23,24 86:6,12,19	58:25
strong	6:4	teams	terms
43:21	system	11:23 89:8	10:18 11:13 21:3 24:23
structure	17:11 28:10 30:16 31:1	tech	29:23 33:2 87:25
24:1,15 48:6	33:2 34:2,3,9,15 35:5	18:2,4,4	test
structured	35:6 55:6,6 68:19,20	technical	37:18,21 79:9
11:11	69:5 71:12 72:16	15:3,4 35:25 37:2,3	testified
stuff	81:21 88:13	technically	6:6 8:8 61:15 64:14
8:25 33:11	systems	84:19	65:7 74:18 77:9
subject	30:18,18 62:18 81:19	technology	testify
10:11	81:23 87:22	18:5 34:8 63:4	6:4 16:2,10 78:1 79:25
submitting		tell	80:8,10,13
	T		

testimony 21:1 51:6,8,22 59:11 61:12 62:11 91:8 92:6,6	72:24 75:6 82:10 86:23 87:2 88:7 90:19	62:4 78:16,16	54:21 62:22,23 75:1,2 75:3
tests 63:16	times 11:23 49:17,17,19 52:14 81:23	trained 15:7,9	two-minute 73:10
Thank 14:1 36:20 91:6	timing 21:4 81:7	training 14:17,20,24 15:2,10 36:21,25 37:2,3,4,5,8 37:9,14,16,19,24 38:3 78:21	type 8:25
Thanks 91:5	TIMOTHY 4:3	transaction 25:21 27:20 30:18 49:8 49:11,13 50:2,5,13 52:9,14 62:16 67:10 67:12 69:15,18 80:17 80:19,20 82:3,4 83:7 87:18,25 88:4,16,19 88:20,23,25 89:5,12	types 15:8 25:4
thing 7:4 51:11 53:2 54:11 62:3	title 27:2		typewriting 92:7
things 27:14 28:3 33:21 50:5 77:17 85:25	today 15:21 16:4 18:25 19:4 20:17 21:10 42:13,20 44:4,6 59:5,8 91:5		typical 11:17 55:2
think 11:9 28:5 31:4 45:16 49:24 57:9,10 65:11 69:25 77:5,14 79:24 83:21 85:1,23 88:13 90:4	told 56:13 77:25 80:5 87:6	transactions 10:8,10 25:2,5,22,23 27:10,23 50:3,4,10 52:13 56:15,17 64:21 67:10 68:14 70:15 71:5 82:18,21 83:9	typically 50:10,14 84:11,15
thinking 14:20	ton 85:20		<hr/> U <hr/>
third 17:8 20:21,25 21:3 65:16 66:5,8,19 76:23 77:6,8,9,21,22,25 78:8 84:22,24 89:17 89:21,23 90:13,24	tons 88:18,18		ultimate 12:7
thirteen 55:7	top 10:2 53:22 64:9 73:17 73:20 74:3,13	transcript 6:22 9:6,8 92:5	under 8:22 9:1 21:25 63:17 78:18 92:8
thousands 34:3	topic 16:11,24 18:7,16,17 19:3,12,14 20:14 21:1 21:6,16 28:20 37:9 64:25,25 65:2	treatment 91:8	undergraduate 14:4
thread 19:22	topics 15:21 16:6,9,15 19:24 20:3 31:6 48:24 59:21 63:22 77:4	trial 8:8 78:1 79:21,25 80:1 80:5,8,14	underneath 9:23 58:1
three 27:14	total 9:25 49:19 64:21 65:4	trigger 28:2,4	understand 15:23 27:9 28:22,23,25 30:13,14 31:8 32:25 35:25 37:16 46:2,4 48:11 49:5 51:20 56:23 67:12,14 72:19 77:11,19 80:16 84:5
throughout 23:13,17	tracks 64:10	true 74:1 92:5	understanding 29:20 31:20 44:11,16 44:19 45:3 46:5,10,11 61:14 73:16
time 7:3 8:3,3 13:4 14:12 16:9 24:15 25:19 32:12 33:4 40:2,6 45:25 47:4,14,15 53:3 57:22 58:6 62:25 69:5,11 70:3 71:9,23	trade 45:12,23 61:20	truth 6:5,5,5	understood 52:23
	traded 15:24	try 28:24 29:19 64:16 70:5 83:8 88:12	Underwriting 26:2
	trades 51:14,16 52:24 62:5	trying 31:8 32:11 46:4,9 51:8 57:12 64:18 77:12,21	UNITED 1:1
	trading 44:24 45:1,11 46:6,15 47:2 61:8,10,16 62:2	turn 50:10	University 14:3
		twice 38:20	upper 46:25 47:19 55:15
		two 12:13 17:16 22:19,19	usage 33:1 37:4,5 51:12

use 17:13 20:12 21:18 29:13 32:18 36:22 37:1,6 59:19 66:2 67:22 81:3 82:17 83:3,6	76:21 verge 41:16,18 version 18:3 84:23 versus 78:21 vice 9:14 video 37:17,20 View 17:15,18,24 36:22 65:17 violated 78:23 79:1 Virginia 1:16 2:8,13 7:21 14:3 Visa 66:10	ways 72:13 web 88:17,18 Wednesday 1:17 week 22:10 42:16,16 79:24 weeks 57:21 75:1,2,3 went 15:4 55:18 56:17 58:12 62:14 85:12 weren't 87:8 West 4:6 we'll 23:24 39:25 we're 16:4 17:4 30:4 36:8 41:13 80:23 we've 52:23 74:12 82:6 whatever 12:17 71:16 83:24 WHEREOF 92:13 Whereupon 6:2 whichever 23:23 whole 6:5 27:7 witness 11:22 16:7 21:2 29:1 31:14 39:10 45:7,22 67:9 73:8 75:16 79:18 90:18 91:6 92:13 witnesses 59:10 80:8 wondering 59:23 68:3 70:10 word 60:19 worded	19:14 words 21:22 work 7:18 8:19,22 11:19 13:14 17:3 21:13 23:2 84:14 86:14,23 87:2 worked 21:20 24:21 33:9 worker 86:20 working 11:8,13 13:4 31:17 59:7 63:12 87:8 works 16:18 31:7 69:1 world 68:3 wouldn't 42:4 82:13 write 29:12,15 68:23 writes 28:14 writing 6:18 8:19,23 9:4 11:19 15:8 written 34:6 39:5,6,7,8,12,15 43:13 76:17 wrong 57:14
users 17:19,22 34:3,3,10,11 36:10 49:18 58:13 82:8,18 89:8 uses 67:16 using 10:16 20:22 28:6,14 33:6 34:4,19 45:7 49:3,7 50:17 51:13,18 52:21 53:2,3 63:4 82:12 87:3 U.S 3:6 18:10 63:23 64:3 73:18	<hr/> W <hr/> wait 6:19,21 9:5 82:25 87:10 walk 68:15 Wal-Mart 83:10,11,13,18 84:9,21 want 9:5,8 16:9 18:7 19:9 24:4 38:10 42:17,18 42:25 47:3 48:5,9 51:9 52:16 56:4 57:8 57:9 61:2 62:10 68:21 77:6,15 80:22 85:3 wanted 27:8 Washington 3:20 4:7 wasn't 58:20 70:17 watched 37:17 way 12:17 23:4 53:3 62:11 65:3 66:3,18 77:16	weren't 87:8 West 4:6 we'll 23:24 39:25 we're 16:4 17:4 30:4 36:8 41:13 80:23 we've 52:23 74:12 82:6 whatever 12:17 71:16 83:24 WHEREOF 92:13 Whereupon 6:2 whichever 23:23 whole 6:5 27:7 witness 11:22 16:7 21:2 29:1 31:14 39:10 45:7,22 67:9 73:8 75:16 79:18 90:18 91:6 92:13 witnesses 59:10 80:8 wondering 59:23 68:3 70:10 word 60:19 worded	working 11:8,13 13:4 31:17 59:7 63:12 87:8 works 16:18 31:7 69:1 world 68:3 wouldn't 42:4 82:13 write 29:12,15 68:23 writes 28:14 writing 6:18 8:19,23 9:4 11:19 15:8 written 34:6 39:5,6,7,8,12,15 43:13 76:17 wrong 57:14
<hr/> V <hr/> v 1:6 VA 4:14,21 vague 11:5 22:11 34:25 36:7 36:14 46:17 47:8 55:21 56:8 59:3 64:5 66:7 69:7 70:8 81:5 81:15 82:22 84:2 90:14 vagueness 33:16 35:22 validate 44:24 variety 14:13 72:13 various 9:1 13:4,15,16 vendor 81:12 verbal			<hr/> X <hr/> X 5:8 <hr/> Y <hr/> Yeah 10:15,22 61:4 68:6 71:18 85:5 88:9,25 year 13:1 25:20 62:22 64:23 70:4 73:25 74:2,9 75:1 years 12:13 74:12

year's	18:9 74:16	3,200	1:23
49:17	2,000	49:17	94420
Yep	49:18 83:3	3,800	1:22
33:1 68:18	2,500	49:19	
yesterday	49:18	301	
19:8	2:15-cv-00269-MAK	2:7 4:13	
York	1:6	31	
16:3	20th	92:17	
yourself	92:14		
58:1	2000	<hr/> 4 <hr/>	
<hr/> 1 <hr/>	13:1 14:22	4	
1	20004	20:20	
1:23 5:10 15:14,15,19	4:7	410	
74:14	20036	4:6	
1st	3:20	45	
75:1	2011	7:17	
1:40	24:14	4870	
91:10	2013	2:6 4:12	
11th	1:17 47:12 63:1 69:12	<hr/> 5 <hr/>	
79:23	2014	5	
11:00	25:20 40:7 47:13 55:17	21:12	
1:18	56:2 57:20 70:4	520	
1101	74:20	3:10	
3:18	2015	555	
12,000	13:24 46:21 53:23	4:5	
49:16 52:14 70:2	92:15	5724	
13th	2016	7:21	
4:5	92:17	<hr/> 6 <hr/>	
14	202)661-7027	6	
1:17	4:8	5:2	
15	202)803-5859	<hr/> 7 <hr/>	
5:10 41:23	3:21	705	
15000	203748	3:19	
4:20 7:19	92:20	<hr/> 8 <hr/>	
1617	215)597-3741	804)284-8928	
3:9	3:12	4:22	
17th	23059	804)762-5369	
3:18	7:22	4:15	
19103	23060	85	
3:11	2:8 4:14	10:1,3,5 21:24	
1992	23238	<hr/> 9 <hr/>	
14:10,11	4:21	90	
1996	<hr/> 3 <hr/>	5:3	
12:16,21 14:12	3	92	
<hr/> 2 <hr/>	20:9		
2	3,000		
	83:3		